



# American

**TORTURE AND THE LOGIC OF DOMINATION**  
**KRISTIAN WILLIAMS**



# Methods



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Portland, OR, Police Bureau (Ret.)





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## Methods

**Kristian Williams**

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Cover photos: (*top*) Police officers arrest Reverend Martin Luther King for "loitering" near a courtroom where one of his integration lieutenants was on the stand. King charged he was beaten and choked by the arresting officers. Police denied the charges. Montgomery, Alabama, 1958. Image © Bettmann/Corbis. (*bottom*) US soldiers from the 3<sup>rd</sup> Infantry Division arrest an Iraqi youth during a routine patrol. Baghdad, Iraq, 2005. Image © Thaier al-Sudani/Reuters/Corbis.

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## INTRODUCTION

# BEYOND SCANDAL

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THE PHOTOGRAPHS<sup>1</sup> SHOW NAKED, contorted bodies arranged in a pyramid. They show hooded men masturbating while a soldier smiles and points. They show a dead body packed in ice, and smiling soldiers giving the thumbs-up. They show dogs straining at the leash, and a nude man cowering—and the same man, later, bleeding. They show a ghostly figure, hooded and draped with a blanket, standing on a narrow box, wires running from his hands.

But on their own, these pictures from the American military prison at Abu Ghraib tell us almost nothing. They offer a glimpse of horror, but they cannot explain what is happening, or why, or who benefits, or who is responsible. They do not tell us when the photos were taken, or by whom, or for what purpose. And they do not indicate what such pictures might mean for the photographers, or for their intended audience, or for the American public, or for the people of Iraq.

For that, the images need to be put in context—or rather, in a variety of contexts: situational, institutional, legal, political, historical. Viewed in isolation, they are only grisly snapshots. They become merely awful.

So, soon after the pictures were made public, the Bush administration began its campaign to control the interpretation given the images.

What happened was wrong, we were told, but it was “technically different from torture.”<sup>2</sup> A “few American troops ... disregarded our values,”<sup>3</sup> but their conduct represented only a series of “isolated incidents.”<sup>4</sup> Furthermore, the problem is solved: “We have corrected this, and we are now bringing those responsible to justice.”<sup>5</sup>

In other words, let's not make too much out of some dirty pictures. Blame the soldiers, not the military. Question their conduct, not the war. Wonder aloud about their moral character, but not about the state of our nation. Look at the photos, if you must, but ignore everything that surrounds.

Bush and company have good reasons for promoting the narrow view, but the rest of us have good reason to resist it. In this



book, I will approach what happened at Abu Ghraib not as an anomaly, but as an episode that just happens to be publicly acknowledged and well documented. Because of the scandal—that is, ultimately, because of the photographs—Abu Ghraib has been the subject of numerous investigations and extensive reporting. For this reason it has become an obvious place to start—though, too often, it has also been the place where this discussion has ended. That is the problem with scandals: their tendency is to obscure the larger framework, which, given its firm grounding in the everyday, may help us to make sense of them.<sup>6</sup>

*American Methods* is not, ultimately, a book about Abu Ghraib. It is instead a book about torture, and a book about the USA, about our system of government and the inequalities it preserves. I aim to deploy scandals—that at Abu Ghraib, and others like it—not as morality plays or political advertisements, but as signposts for a broader discussion of power and the institutions that wield it. The chapters that follow will seek to identify the conditions in which torture occurs, map the lines of responsibility, and illustrate the connections between the practices of the torture chamber and larger systems of power, especially imperialism, racism, and male dominance. The discussion will range broadly, over a quarter century and much of the globe. It will consider ethical, legal, and political aspects of torture, and it will describe the use of torture by our country's military, its intelligence agencies, its police and prison authorities, and by friendly regimes acting on our behalf.

It would be possible, of course, to trace the story even further, to extensively recount the role of torture in the American colonies, in the displacement and extermination of Native peoples, in the control of enslaved Africans and the legacy of lynching, in the development of capitalism and the suppression of organized labor, in the operation of public schools, poorhouses, and mental hospitals, and as it has been practiced by the church and the patriarchal family. I focus here on our current historical moment because the present is important to those who live in it in a way that the past can never be. We can, and must, confront our history but we cannot act to change it, no matter how much we may wish we could. The present, however, is the moment in which such action is possible, and the stakes are high, indeed—not only the future, but our humanity.

Our current period has been characterized by the aggressive expansion of US influence overseas and the rapid intensification of state repression within our borders—shifts dramatically signaled by the 2003 US invasion of Iraq and the passage of the USA Patriot

Act, respectively. These are, in a real sense, parallel developments. The institutions responsible, the interests they serve, and the means they employ are strikingly similar. And this resemblance, as we shall see, extends to the state's use of torture—as a means of control, as an instrument of terror.

Torture, I will argue, is not incidental to state power; it is characteristic of that power. Torture doesn't represent a system failure; it is the system.

## NOTES

- <sup>1</sup> The photographs were first made public by the CBS news show *60 Minutes II* on April 28, 2004. They also appear in Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror* (New York: New York Review Books, 2004), 217–224.
- <sup>2</sup> Donald Rumsfeld. Quoted in Susan Sontag, "Regarding the Torture of Others," *New York Times Magazine*, May 23, 2004, 25.
- <sup>3</sup> President George W. Bush. Quoted in Human Rights Watch, "The Road to Abu Ghraib," June 2004.
- <sup>4</sup> Army General John P. Abizaid. Quoted in Bradley Graham, "No Pattern of Prisoner Abuse, General Says," *Washington Post*, May 20, 2004.
- <sup>5</sup> Major General Geoffrey D. Miller. Quoted in Jackie Spinner, "Abu Ghraib Policy Defended," *Washington Post*, August 17, 2004.
- <sup>6</sup> "Spectacle," note Jared Sexton and Steve Marinot, "is a form of camouflage." From "The Avant-Garde of White Supremacy," *Social Identities* 9, no. 2 (2003): 174.



PART I

AMERICA ABROAD





## CHAPTER 1

# INSIDE ABU GHRAIB

---

A NOTORIOUS CENTER OF TORTURE during the 40-year reign of the Ba'ath Party in Iraq, the Abu Ghraib prison lies in the desert town of the same name, about 20 miles west of Baghdad. The US military took over the facility shortly after its April 2003 invasion, renamed the prison "Baghdad Central Confinement Facility" (also known as Baghdad Central Correctional Facility), and began using it to hold a mix of prisoners of war (POWs), criminal suspects, resistance fighters, political prisoners, and noncombatants thought to have information about the growing insurgency—as well as a great many bystanders caught up in broad sweeps.

In the imagination of George W. Bush's speechwriters, US troops were bringing freedom to an oppressed people, insuring that "the torture chambers and the secret police are gone forever."<sup>1</sup> The reality, of course, turned out to be something quite different. We got a small glimpse as to how different on April 28, 2004, when the CBS news program *60 Minutes II* broadcast the now infamous photographs.<sup>2</sup>

### THE STORIES BEHIND THE PICTURES

Several of the most widely circulated photos from Abu Ghraib date from a single night, November 8, 2003, when guards tormented seven prisoners accused of inciting a riot in the prison.

Specialist Matthew Wisdom, a Military Police (MP) guard, told investigators that when he delivered one of the prisoners to Tier IA at Abu Ghraib,

SPC Snider grabbed my prisoner and threw him into a pile. ... I do not think it was right to put them in a pile. I saw SSG Frederic [*sic*], SGT Davis and CPL Graner walking around the pile hitting the prisoners. I remember SSG Frederick hitting one prisoner in the side of its [*sic*] ribcage. The prisoner was no danger to SSG Frederick. ... I left after that.<sup>3</sup>

The guards lined the captives up against a wall. According to Private Lynndie England, Staff Sergeant Ivan "Chip" L. Frederick II "walked up to the first prisoner and started to move his left arm in the motion of masturbating." He then asked England to pose for a picture with the prisoner. She says, "I really didn't want to get close to him masturbating, but posed for the picture anyway."<sup>4</sup> The photo shows her, a cigarette hanging from her mouth, pointing at the nude man's genitals and giving the thumbs-up.

One of the men in the photos, Nori Samir Gunbar Al-Yasseri, describes his experience:

When we were naked [a guard] ordered us to stroke, acting like we're masturbating and when we start to do that he would bring another inmate and sit him down on his knees in front of the penis and take photos which looked like this inmate was putting the penis in his mouth.<sup>5</sup>

Around this time, Spec. Wisdom returned:

I saw two naked detainees, one masturbating to another kneeling with its [sic] mouth open. I thought I should just get out of there. I didn't think it was right. ... I saw SSG Frederick walking towards me, and he said, "Look what these animals will do when you leave them alone for two seconds." I heard PFC England shout out, "He's getting hard."<sup>6</sup>

After that, Al-Yasseri says, "they made us get on our hands and knees and they started to pile us one on top of the other. They started to take pictures from the front and from the back."<sup>7</sup> One of the photographs shows two members of the 372<sup>nd</sup> Military Police Company, Corporal Charles A. Graner and Specialist Sabrina Harman, standing behind the grotesque stack of bodies. Both are smiling, and Graner is offering the thumbs-up.

Harman told an investigator:

[Harman:] "Graner was placing them into position."

[Investigator:] "How long did the human pyramid last?"

[Harman:] "The pyramid lasted about 15 to 20 minutes."<sup>8</sup>

Hussein Mohssein Mata Al-Zayyadi remembers the evening's events like this:

We were treated very badly. They took off our clothes, even the underwear and they beat us very hard, and they put a hood over my head. ... And one of them brought

my friend and told him "stand here" and they brought me and had me kneel in front of my friend. They told my friend to masturbate and told me to masturbate also, while they were taking pictures.

After that they brought my friends, Haidar, Ahmed, Nouri, Ahzem, Hashiem, Mustafa, and I, and they put us 2 on the bottom, 2 on the top, and 2 on top of those and one on top. They took pictures of us and we were naked.

After the end of the beating, they took us to our separate cells and they opened the water in the cell and told us to lay face down in the water and we stayed like that until the morning, in the water, naked, without clothes. Then one of the other shifts gave us clothes, but the second shift took the clothes away at night and handcuffed us to the beds.<sup>9</sup>

As Al-Yasseri observed, "They treated us like animals, not humans. ... No one showed us mercy."<sup>10</sup>

"

Similar photographs document another ordeal from a few days earlier, October 24, 2003. England describes the situation:

The two prisoners had supposedly raped a 15-year-old boy in the prison the night before. ... MI [Military Intelligence] had told us to "rough them up" to get answers.<sup>11</sup>

The army's concern for this youth's well-being is surely questionable, given its decision to confine him in an adult prison; it is hard to reconcile England's explanation for the abuse of suspected rapists with the military's failure to protect a child from rape in the first place. Furthermore, England herself wasn't actually supposed to handle prisoners at all; she served as a clerk (not as a guard or interrogator), and was only in the cell block to visit friends who worked there. Nevertheless, she joined in the abuse.

They started to handcuff the two rapist[s] together in odd positions/ways. ... Once the two were handcuffed together, the third guy was brought over and handcuffed between the other two. Then they were laying on the floor handcuffed together, so all the other prisoners could see them. CPL Graner and SSG Frederick then asked me to start taking pictures with the camera.<sup>12</sup>

She explains: "The prisoners were stripped naked so it would embarrass them in front of the other prisoners. ... [The idea was] to wear them down and get them tired so they would tell us if they really did rape the boy."<sup>13</sup>

"

Manadel al-Jamadi cannot tell us how he came to appear in the Abu Ghraib photos. But Chip Frederick wrote home about the incident, stating that

They stressed him out so bad that the man passed away. They put his body in a body bag and packed him in ice for approximately twenty-four hours in the shower. ... The next day the medics came and put his body on a stretcher, placed a fake IV in his arm and took him away.<sup>14</sup>

Specialist Jason Kenner, an MP with the 372<sup>nd</sup> Company, later testified that, sometime in November 2003, the OGA (the "Other Government Agency," a euphemism for the CIA) and Navy SEALs brought in a prisoner who had been badly beaten about the face. They left him chained in the shower, and "about an hour later, he died on them."<sup>15</sup> Documents released later revealed that al-Jamadi had been left in a stress position known as the "Palestinian Hanging."<sup>16</sup>

Captain Donald J. Reese, the commander of the 372<sup>nd</sup>, was summoned to the shower room along with other officers, including Colonel Thomas M. Pappas. Reese said that they sent for ice, but did not summon medics or record al-Jamadi's identity. An autopsy the next day showed that he had died from a blood clot caused by a blow to the head.<sup>17</sup> The incident was never entered into the prison's official records, and likely would have gone undiscovered were it not for the photograph of Sabrina Harman leaning over a corpse with a bag of ice on its chest, giving the thumbs-up and a wide grin.

"

As disturbing as the photos are, we have probably not seen the worst of the abuses.

For instance, two prisoners, Kasim Mahaddi Hilas and Mustafa Jassim Mustafa, witnessed Charles Graner sodomizing a detainee with a chemical light. Mustafa told investigators:

Before Ramadan, Grainer [*sic*] started covering all the rooms with bedsheets. Then I heard screams coming from Room #1, at that time I was in Room #50 and it's right below me so I looked into the room. I saw [name deleted]



in Room #1, who was naked and Grainer was putting the phosphoric light up his ass. [The prisoner] was screaming for help. There was another tall white man who was with Grainer, he was helping him. There was also a white female soldier, short, she was taking pictures.<sup>18</sup>

Hilas also complained about his own treatment. He says that when he arrived at Abu Ghraib "they stripped me of all my clothes, even my underwear. They gave me women's underwear, that was rose color with flowers [on] it and they put the bag over my face. ... And most days I was wearing nothing else." He also testifies that Graner "cuffed my hands with irons behind my back to the metal of the window, to the point my feet were off the ground and I was hanging there, for about five hours ... and he took the female underwear and put it over my head."<sup>19</sup>

Another prisoner claims that guards raped him with a nightstick. Identified only as "Detainee-07" in Major General George R. Fay's report on the role of Military Intelligence (MI),<sup>20</sup> the man told investigators:

The soldier and his friend told me in a loud voice to lie down, so I did that. And then the policeman was opening my legs, with a bag over my head, and he sat down between my legs on his knees and I was looking at him from under the bag and they wanted to do me because I saw him and he was opening his pants, so I started screaming loudly and the other police started hitting me with his feet on my neck and he put his feet on my head so I couldn't scream.

Then ... they put me inside the dark room again and they started beating me with the broom that was there. And then they put the loudspeaker inside the room and they closed the door and he was yelling in the microphone. Then they broke the glowing finger [a chemical light] and spread it on me until I was glowing and they were laughing.

They took me to the room and signaled me to get on the floor. And one of the police he put a part of his stick that he always carries inside my ass and I felt it going inside me about 2 centimeters, approximately. And I started screaming. ...

They were taking pictures of me during all these instances.<sup>21</sup>

Ameen Sa'eed Al-Sheikh, identified as "Detainee-06" in the Fay report, accused the soldiers of a vast litany of abuses probably intended as retaliation against him. Al-Sheikh is Syrian and admits to traveling to Iraq to fight against the US. He managed to have a gun smuggled into Abu Ghraib, and on November 24, 2003, used it to attack the guards. The guards returned fire, and he was injured.<sup>22</sup>

Al-Sheikh testifies that while he was in the hospital following the shooting, "the interrogator 'Steve' came to me and threaten me with the hardest torture when I go back to prison. I said to him, 'I'm sorry about what happened.' He said to me, 'Don't be sorry now, because you will be sorry later.'"<sup>23</sup> This threat seems to have been in earnest. Al-Sheikh says that, when he returned to the cell-block, guards

received me there with screaming, shoving, pushing, and pulling. They forced me to walk from the main gate to my cell. Otherwise, they would beat my broken leg. I was in very bad shape. When I went to the cell, they took my crutches and I didn't see it since. Inside the cell, they asked me to strip naked; they didn't give me blanket or clothes or anything.

Every hour or two, soldiers came, threatening me they were going to kill me and torture me and I'm going to be in prison forever and they might transfer me to Guantánamo Bay. ... Sometime[s] they said, "We will make you wish to die and it will not happen."

The night guard came over, his name is GRANER, open the cell door, came in with a number of soldiers. They forced me to eat pork and they put liquor in my mouth. They put this substance on my nose and forehead and it was very hot. The guards started to hit me on my broken leg several times with a solid plastic stick. ...

They stripped me naked. One of them told me he would rape me. He drew a picture of a woman on my back and makes me stand in shameful position holding my buttocks. ...

Then they handcuffed me and hung me to the bed. They ordered me to curse my religion. They ordered me to thank Jesus that I'm alive. And I did what they ordered me. They left me hang[ing] from the bed and after a little while I lost consciousness.<sup>24</sup>

This treatment continued for more than a week—a constant series of threats, insults, questions, slaps, smacks, stress positions, barking dogs, and pointed guns.

Witnesses have corroborated Al-Sheikh's claims. A medic told investigators that he saw Graner poking at the wounded leg of "Detainee-06" with a police baton while the prisoner was cuffed to an upper bunk and unable to sit down. The next day, the medic returned to find Al-Sheikh again cuffed to an upper bunk, and a few days later saw him chained to the cell door, suffering a dislocated shoulder.<sup>25</sup>

Likewise, Sergeant Theresa Adams, an interrogator with the 470<sup>th</sup> Military Intelligence Group, says that when she visited Al-Sheikh after his hospitalization she found him naked in his cell, left with a catheter but no bag. She ordered the guards to give him clothes and reported his condition to the doctor on duty (a colonel), who refused to check on him. She asked the colonel if he was familiar with the Geneva Conventions, and he replied, "Fine, Sergeant, you do what you have to do. I'm going back to bed."<sup>26</sup>

Forty-two women were held in the Abu Ghraib prison during the first months of the US occupation. One, identified as Mithad, told the *American Prospect* of the conditions in which she was held: "They stripped me and searched me. ... Then they gave me blankets and put me in solitary confinement in a room two metres by one-and-a-half metres. There was no light in the room. I was there three months."<sup>27</sup>

Mithad's treatment seems typical. The fact is, women in Abu Ghraib have been held in solitary confinement more commonly than the men. Military officials explain this as an unfortunate side-effect of their efforts to segregate the prison by sex.<sup>28</sup> But while such segregation may protect the detained women from male inmates, this isolation also makes the women more vulnerable to abuse at the hands of guards and interrogators. And one has to wonder about the value of such "protection," especially when it takes the distinctly punitive form of long-term solitude.

Making matters worse, many of the women held in Abu Ghraib are not themselves suspected of any crime or resistance activity. Most often, they are associated with men who are so suspected. Further, some women are arrested simply for being at the wrong place at the wrong time—during raids of their families' homes or in broad "sweeps" of entire neighborhoods. Others are held not because they are thought to have participated in attacks on the US forces, but because they *might* know something about those who have.<sup>29</sup>

Khadeja Yassem, a former school principal, described her interrogation at Abu Ghraib:

they took me to a room with a dog. It was on a leash, and it was standing two metres from me. I was terrified—I felt as if I would go mad. My legs buckled, and I collapsed. An American soldier—a woman—was standing behind me, and she held me up. I was kept in the room for two or three minutes, and then I was taken to another place for the interrogation. They asked me about my brother. I said, “I don’t know where he is.” They said, “You have seen the dog. Now tell us the truth.”<sup>30</sup>

Huda Alazawi, who was arrested along with her entire family, was given the job of emptying trash in the prison. She told the *Guardian*:

Because I could speak a bit of English I was given the job of emptying the rubbish. There was never enough food and one day I came across an old woman who had collapsed from hunger. The Americans were always eating lots of hot food. I found some in a packet in a bin and gave it to her. They caught me and threw me in a one-metre-square punishment cell. They poured cold water on me for four hours.<sup>31</sup>

Alazawi spent eight months at Abu Ghraib. By her count, she was in solitary confinement 157 days.

None of the women held in US military custody would talk to the media about rape or sexual assault. This silence is hardly surprising given the severe stigma attached to rape victims in Middle Eastern society, a stigma that can manifest in the form of further violence against the victim (often perpetrated by her family as a means of regaining their “honor.”)<sup>32</sup> For this reason—along with the relatively common (and therefore “unremarkable”) nature of violence against women, during peace as well as war, outside of prison as well as inside, during independence as well as under foreign occupation—the media have all but ignored this aspect of life at Abu Ghraib.<sup>33</sup> Nevertheless, some information has come out: the Fay report documents incidents of sexual assault, and unreleased photographs show Iraqi women baring their breasts and being fucked by US soldiers.<sup>34</sup>

President Bush and Secretary of Defense Donald Rumsfeld have insisted that the abuses at Abu Ghraib are anomalous, the work of a handful of sadists and thugs. Every serious investigation into the scandal has reached the opposite conclusion.<sup>35</sup>

Major General Fay's report provides a minimum estimate of the torture used at Abu Ghraib. He writes:

The abuses spanned from direct physical assault, such as delivering head blows rendering detainees unconscious, to sexual posing and forced participation in group masturbation. At the extremes were the death of a detainee in OGA custody, an alleged rape committed by a US translator and observed by a female soldier, and the alleged sexual assault of an unknown female. ... Twenty-four serious incidents of physical and sexual abuse occurred from 20 September through 13 December 2003.<sup>36</sup>

Fay cataloged a total of 44 cases of abuse, involving 54 soldiers, medics, and civilian contractors.<sup>37</sup> Of course, as this count reflects only those abuses known to him at the time of the report and excludes many allegations that could not be substantiated, it is likely to be lower than the actual number of such incidents.

Nor was the blame restricted to the lowest troops. The Defense Department's investigative committee, headed by James R. Schlesinger, found that "in nearly 10 percent of the cases of alleged abuse, the chain of command ignored reports of these allegations. More than once a commander was complicit."<sup>38</sup> Fay's investigation uncovered documentary evidence suggesting that Lieutenant Colonel Steven Jordon (head of the Joint Interrogation and Detention Center at Abu Ghraib) and Lieutenant Colonel Jerry Phillabaum (head of the 320<sup>th</sup> Military Police Battalion) knew about the use of forced nudity to coerce prisoners.<sup>39</sup> Fay also notes that numerous interrogation reports

indicate the routine and repetitive use of total isolation and light deprivation. *Documentation of this technique in the interrogation reports implies those employing it thought it was authorized.* The manner in which it was applied is a violation of the Geneva Conventions, CJTF-7 policy, and Army policy.<sup>40</sup>

Some of those who worked to maintain these conditions claim they never understood that they were breaking the rules. Specialist Harman, for one, says:

The Geneva Convention was never posted, and none of us remember taking a class to review it. ... [My] first time reading it was two months after being charged. I read the entire thing highlighting everything the prison is in violation of. There's a lot.<sup>41</sup>



Others say that they knew they were breaking the rules, but were acting in accordance with superior orders. Corporal Graner told a military court, "I know the Geneva Conventions, better than anyone else in my company. ... And we were called on to violate the Geneva Conventions."<sup>42</sup>

Notice the difference: Harman pleads ignorance; Graner cites superior orders. Harman's account implies that the inadequacy of their instructions allowed the soldiers to simply assume that their behavior was acceptable. She emphasizes what her superiors *failed* to do. Graner goes a step further, citing what the officers *did* do. While Graner knew he was violating the rules, he claims he did so only under the direction of his superiors.

Each soldier, in a different way, blames the commanders. As we shall see, even the lesser accusation is enough to indict the superior officers. But Graner's more powerful accusation still cannot excuse the soldiers who carried out the atrocities.

#### TORTURE AND THE LAW

The Third and Fourth Geneva Conventions, those dealing with the treatment of POWs and civilians in times of war, respectively, were drafted in their present form after World War II, largely in response to Nazi atrocities. Written in 1949 and ratified by the United States in 1955, the Conventions were intended to codify international norms and reciprocally constrain states in their wartime conduct. They offer special protections to captured soldiers and to civilians living under a military occupation. Both Conventions list specific forms of treatment that are prohibited and affirm the responsibility of military authorities to actively protect enemy prisoners and those civilians under their control.

In the Third Convention, Common Article 3 bans "violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" as well as "outrages upon personal dignity, in particular humiliating and degrading treatment."<sup>43</sup> This core idea is explicated in the detailed provisions.

For example, Article 13 of the Third Geneva Convention Relative to the Treatment of Prisoners of War reads:

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention.

... Likewise, *prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.*<sup>44</sup>

Article 17 then specifies:

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

Similar rights are extended to noncombatants as well.<sup>45</sup> Article 31 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War specifies: "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or third parties."

And, Article 32 prohibits

any measure of such a character as to cause the physical suffering or extermination of protected persons ... [including] murder, torture, corporal punishment, mutilation, and ... any other measures of brutality whether applied by civilian or military agents.

Several provisions specifically regulate the internment of civilians and the discipline of detainees. Article 118 specifies that "imprisonment in premises without daylight and, in general, all forms of cruelty without exception are forbidden." And Article 119 states, "In no case shall disciplinary penalties be inhuman, brutal, or dangerous for the health of internees."

Somewhat fewer rights are provided to spies, saboteurs, resistance fighters lacking uniforms or a chain of command, and other such irregular forces. (They can be held incommunicado for limited periods, for example.) But it is still required that they "be treated with humanity," be given a "fair and regular trial," and "be granted the full rights and privileges of a protected person" at the earliest possible date.<sup>46</sup>

In short, the Geneva Conventions directly or indirectly prohibit many of the practices and conditions so prevalent at Abu Ghraib. Among these are the regular use of violence to control the inmate population, coercive interrogations, prolonged solitary confinement, dark cells, rape and other sexual abuses, and the use of photography to humiliate inmates (with the added threat of being exposed to "public curiosity"). Furthermore, according to the stan-

dards of the Conventions, responsibility for these abuses lies not just with those who actually committed them, but also with the other soldiers and the commanders who—at the very least—failed to protect the captives.

Though they are particularly well-known, the Geneva Conventions are not the only source for the prohibition on torture. Article 5 of the Universal Declaration of Human Rights (approved by the United Nations General Assembly in 1948) states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>47</sup>

The prohibition is absolute, as the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment makes clear. Article 2 reads: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

When the US government ratifies such treaties they become, according to Article VI of the Constitution, part of the “supreme law of the land.” But the Constitution also offers its own protections against torture, if somewhat indirectly. The Fourth Amendment’s restrictions on search and seizure protect against arbitrary arrest and outrages against the body. The Fifth Amendment protects accused persons from self-incrimination, thus guarding against compelled testimony and coerced confessions; this is supported by the Sixth Amendment’s guarantee of legal representation. The Fifth and Fourteenth Amendments require the “due process of law.” And the Eighth Amendment prohibits “cruel and unusual punishments.”

More explicitly, according to the US State Department,

Torture is prohibited by law throughout the United States. It is categorically denounced as a matter of policy and as a tool of state authority. Every act constituting torture under the Convention [Against Torture] constitutes a criminal offense under the law of the United States. No official of the government, federal, state, or local, civilian or military, is authorized to commit or instruct anyone else to commit torture. Nor may any official condone or tolerate torture in any form.<sup>48</sup>

The 1996 War Crimes Act (18 USC 2441) establishes in law the standards of the 1949 Geneva Conventions. Further federal laws (specifically, 18 USC 2340) extends US criminal jurisdiction over

any act of torture committed by a US national, no matter where the act occurs, and over any act committed by an offender present in the United States, regardless of nationality. Soldiers are additionally bound by the Uniform Code of Military Justice, which contains the usual prohibition on "assault" and also forbids "cruelty" and the "maltreatment" of prisoners.<sup>49</sup>

This legal framework is tightly constructed and well developed. The promises of the law are sweeping in their scope, scrupulous in their demands. Enforcement, however, is often lax or altogether absent. Practically speaking, enforcement depends on political will—and also on how the rules are interpreted and the standards applied. This complex matrix of policies, laws, conventions, and agreements allows for important differences of interpretation, which may then be exploited through bureaucratic or legal maneuvering.

For example, though the UN urges states to read the law such as to offer the maximum protection to prisoners,<sup>50</sup> the United States government

considers itself bound by the obligation under Article 16 to prevent "cruel, inhuman, or degrading treatment or punishment," only insofar as the term "cruel, inhuman, or degrading treatment or punishment" means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.<sup>51</sup>

This minor semantic quibble ("cruel and unusual" versus "cruel, inhuman, or degrading") took on a bizarre importance in August 2002, when Jay S. Bybee, a Justice Department lawyer, advised the White House that US law "prohibits only extreme acts"<sup>52</sup> and that "certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within [the law's] prescription against torture."<sup>53</sup>

While it is true that the legal prohibitions against torture, or things very like torture, contain differences of terminology and emphasis, it is more important to recognize what they share in common. There is, underlying all the technical language and legal nuance, a very basic ethical principle. The UN Human Rights Commission has stated that the purpose of the prohibition on torture "is to protect both the dignity and the physical and mental integrity of the individual."<sup>54</sup>

Torture is inherently destructive of human dignity.<sup>55</sup> It is not only painful. It is humiliating, degrading. It reduces its victims.

It is one thing to kill—that is, to annihilate a human being. It is something else to negate his worth. The latter, it seems to me, is far more terrible. And that is what torture aims to accomplish. That is how it works, that it what it is for. And that is why it is wrong.

## DEFINING TORTURE

On this ethical base, I would offer the following provisional definition: *Torture consists of the deliberate use of pain, humiliation, or extreme mental distress against persons who pose no immediate physical threat.*<sup>56</sup>

This definition incorporates three criteria:

**(1) *Torture must be deliberate, not merely intentional.***

That is, it must represent a considered course of action, not the result of panic or uncontrolled rage. For instance, pepper spraying an unresisting suspect in order to make him confess, or in retaliation for some earlier fault, or to coerce some third party, is torture. Pepper spraying the same suspect because he lunged in a way you mistook for attack might be excessive force, but is not torture.

**(2) *Torture must employ pain, humiliation, or extreme mental distress as a means, not merely as a by-product.***

The core idea is that torture instrumentalizes suffering. Pain is not incidental to the project (as it might be incidental to a trip to the dentist); pain is what torture is all about. Pain is how it works.

On the other hand, no *actual* pain or humiliation need to be inflicted when the *threat* of it is sufficient to achieve the desired ends. This understanding is in keeping with the UN special rapporteur's position that "the fear of physical torture may itself constitute mental torture."<sup>57</sup> And I think that most people would agree that threatening to burn a person's eyes with cigarettes may *itself* qualify as torture, even if the lit end never actually reaches the cornea.

**(3) *The victim must not present a credible physical threat.***

This qualification helps distinguish torture from combat. (Of course, even in combat, it is possible to violate the rights of the enemy. But the use of pain in the course of mutual violence may be legitimate in a way that the same tactic, used in one-sided violence, would not be.)

My definition is intentionally broad, so as to avoid assumptions about who engages in torture, or why. For the purposes of discussion, it should at least clarify what I'm talking about when I use



the word *torture*. Yet there is a more important question than that of the strict definition, a question we must not lose sight of amidst the legal technicalities and all the nasty details: What constitutes the acceptable treatment of human beings?

The reader is certainly free to take issue with my definition, my standards, or the suitability of any of the numerous examples in this book to the overall argument. I would only ask this: When you encounter such a case, and you question whether it *really* qualifies as torture, also remember to ask yourself whether it represents a way in which people may be treated. The question of torture, as important as it is, is actually secondary. The question of humanity must be first.

This is, I suspect, in line with the way much of the public approaches these issues. Depending on whose survey you believe, between 32 percent<sup>58</sup> and 46 percent<sup>59</sup> of the American public thinks that torture is acceptable in the context of the War on Terror.<sup>60</sup> Given the range of views concerning what is, or is not, "torture," these statistics wouldn't actually tell us very much even if they agreed.

The more detailed surveys, however, also provide this information: a January 2005 poll found Americans split on the use of sleep deprivation (49 percent said it was "right," 48 percent "wrong"). But there was more agreement on "threatening to transfer prisoners to a country known for using torture" (62 percent against); "threatening prisoners with dogs" (69 percent against); "forcing prisoners to remain naked and chained in uncomfortable positions in cold rooms for several hours" (73 percent against); "strapping prisoners to boards and forcing their heads underwater until they think they are drowning" (82 percent against); and "having female interrogators make physical contact with Muslim men during religious observances that prohibit such contact" (85 percent against).<sup>61</sup>

Likewise, according to a May 2004 poll, 66 percent think that sleep deprivation is sometimes permissible, 57 percent accept hooding, and 54 percent would allow loud music for extended periods of time. Meanwhile, most Americans say it is *never* acceptable to threaten to shoot a prisoner (57 percent), expose him to extreme temperatures (58 percent), withhold food or water (61 percent), punch or kick him (69 percent), deny him clothing (74 percent), hold his head underwater (78 percent), threaten his family (80 percent), apply electrical shocks (82 percent), or sexually humiliate him (84 percent). And yet, only one-third of those questioned saw the Abu Ghraib abuses as "torture."<sup>62</sup>

In short, the majority of Americans oppose the sort of treatment prisoners experienced at Abu Ghraib, whether or not they recognize such treatment as torture.<sup>63</sup> This data suggests to me that the term *torture* does not feature prominently in the moral reasoning of the American public, though standards of decent treatment do.<sup>64</sup> And the latter, as I have said, is actually much more important.

#### ATROCITY FROM ABOVE, ATROCITY FROM BELOW

However we define it, and whatever rule we cite, it is at least clear that torture is prohibited. But what sort of person *needs* a rule to tell him not to beat a chained prisoner, or strip and photograph him in degrading poses? Who needs to be *told* not to rape and starve a woman, or electrocute a child?

Distressingly, the answer may be, under the right circumstances, *all of us*.

In an ingeniously simple series of experiments, social psychologist Stanley Milgram studied the nature of obedience by asking one volunteer to electrically shock another, and by having him incrementally increase the voltage over the victim's objections, pleas, and demands to be released. The subject was told that the experiment would measure the effect of pain on a person's ability to memorize pairs of words. In truth, "the point of the experiment is to see how far a person will proceed in a concrete and measurable situation in which he is ordered to inflict increasing pain on a protesting victim."<sup>65</sup> (The "victim" was actually an actor; no one was hurt during the study.) The rate of obedience varied, according to the setting in which the experiment was conducted and changes in the roles involved. But the overall tendency to obey was remarkable. In a study conducted at Yale University, 65 percent of the subjects continued applying the electricity through to the maximum voltage.<sup>66</sup>

Milgram writes,

A reader's initial reaction to the experiment may be to wonder why anyone in his right mind would administer even the first shocks. Would he not simply refuse and walk out of the laboratory? But the fact is that no one ever does. ... Despite the fact that many subjects experience stress, despite the fact that many protest to the experimenter, a substantial proportion continue to the last shock on the generator.

Many subjects will obey the experiment no matter how vehement the pleading of the person being shocked, no matter how painful the shocks seem to be, and no

matter how much the victim pleads to be let out. ... It is the extreme willingness of adults to go to almost any lengths on the command of an authority that constitutes the chief finding of this study.<sup>67</sup>

Based on his findings, Milgram identified some preconditions for obedience, including the perception of legitimate authority, the entry into an authority system, a command issued from the relevant authority, and an overarching ideological justification.<sup>68</sup> He then applied his theory to studies of the participants in famous atrocities (including the My Lai massacre) and discovered some common themes. For example, participants in atrocities employ psychological adjustments to ease the strain of obeying immoral orders. They tend to be dominated by an administrative, rather than a moral, outlook. They come to derive their personal values from the needs of the organization. They justify their tasks in terms of constructive purposes and ideological goals. They employ euphemisms and consider direct talk about violence to be impolite. Subordinates tend to assign responsibility upward. And obedience presents itself as a matter of routine, not as the result of an overt power struggle.<sup>69</sup>

But obedience might be only half the equation. In 1971, a less rigorous (and less reproduced) experiment at Stanford University sought to study the psychological effects of confinement by constructing a simulated prison on the school's campus. A group of student volunteers—two dozen white, “healthy, intelligent middle-class males”<sup>70</sup>—were randomly divided into two groups, representing prisoners and guards. Almost immediately, the Stanford Prison Experiment went awry. The “guards” began tormenting the “prisoners,” forcing them to do jumping-jacks and push-ups, stripping them naked, dressing them in hoods and chains, putting them in solitary confinement, and denying them blankets, mattresses, meals, and bathroom access. The developing *Lord of the Flies* scenario led the researchers to abandon the experiment after just six days, before it had run even half its scheduled length.<sup>71</sup>

One “guard,” looking back on the experiment, said, “I really thought that I was incapable of this kind of behavior. ... And while I was doing it, I didn’t feel any regret, I didn’t feel any guilt.”<sup>72</sup>

Craig Haney, one of the researchers, concludes: “Environments in which one group of people is given near total control over another invariably degenerate into places pervaded by mistrust and abuse.”<sup>73</sup>

The Milgram and Stanford experiments each lend support to traditional explanations of military atrocities. According to one type, resonating with Milgram’s work, soldiers commit war

crimes because they are ordered to do so and feel compelled to obey. According to another theory, in keeping with the Stanford experiment, soldiers commit war crimes when discipline breaks down and their most base passions are unleashed. The truth, in most cases, is likely some combination of the two.

Mark Osiel indicates something of the range of possibilities. He writes,

The social organization of military life and the experience of combat have fostered atrocities in several ways: (1) by stimulating violent passions among the troops ("from below"); (2) through organized, directed campaigns of terror ("from above"); (3) by tacit connivance between higher and lower echelons, each with its own motives; and (4) by brutalization of subordinates to foster their aggressiveness in combat.<sup>74</sup>

The use of dogs to torment prisoners at Abu Ghraib illustrates the concurrence of both obedience to authority and self-motivated cruelty—and demonstrates *the complicity of personnel at every level*. Specialist Sabrina Harman told army investigators of one incident featured in the photographs:

Two dogs were brought into [Tier] 1A to scare an inmate. He was naked against the wall, when they let the dogs corner him. They pulled them back enough, and the prisoner ran ... straight across the floor. ... The prisoner was cornered and the dog bit his leg. A couple seconds later, he started to move again, and the dog bit his other leg.<sup>75</sup>

There is no question that some of the dog handlers were carried away by their sadistic impulses. Whereas navy dog handlers simply refused to participate in interrogations, their army counterparts competed among themselves to see who could make the most prisoners lose control of their bowels.<sup>76</sup> But the use of military dogs to intimidate prisoners was not the soldiers' idea; it also had the force of authority behind it. Colonel Thomas Pappas, the head of the 205<sup>th</sup> Military Intelligence Brigade, told investigators:

It was a technique I had personally discussed with General Miller, when he was here. ... He said that they used military working dogs at Gitmo [Guantánamo Bay]. ... and that they were effective in setting the atmosphere for which, you know, you could get information.<sup>77</sup>

Whatever one's opinion of human nature, and however diabolical the desires that drive us, it must still be admitted that we are largely, even at the level of individual psychology, the product of



social forces. Indeed, it is frequently impossible to discern where individual psychology begins and social forces end. And brutal institutions must create the sadists they need.

Which brings us back to the rules of war.

No rule can guarantee decency or compassion. But rules do not only govern individuals; they shape institutions as well. For a soldier on the ground, a rule against torturing prisoners or massacring civilians can help to mark off the limits of his expected obedience. It will identify certain types of orders as illegitimate by the standards of the very organization on whose authority they rely. In a sense, the rule locates that authority on the side of those who resist illegal orders, and against those who issue them.

While the rules of war cannot grant us moral virtue or strength of character, they may at least help us to defend ourselves against institutions that would prey on our moral weakness and exploit our worst impulses. Such rules may legitimate our virtues, and help us to find the courage to follow our conscience.

#### COMMAND RESPONSIBILITY AND THE DUTY TO DISOBEY

The means of preventing war crimes must address each of their two possible sources—obedience to superior orders, on the one hand, and a failure of discipline, on the other.<sup>78</sup>

Commanders are obligated to maintain discipline and prevent abuse by their subordinates. The subordinates, meanwhile, are obligated not to obey any inhumane or unlawful order. In theory this provides a double-safeguard against atrocities: for torture to occur *everyone* would have to be negligent in their duties.

But the double-safeguard turns out to be an extremely weak check on abuse. In practice, everyone who knows of the abuse (aside from the victim) is likely to be complicit in it. Thus, torture—and the secrecy surrounding it—provides a bonding experience, a boost for morale and unit cohesion, and a means for commanders to gain and keep the loyalty of their troops.<sup>79</sup> In addition, torture can serve as a means of initiation, with it often being psychologically very difficult for one initiate to turn in the others—especially since it will usually involve incriminating himself as well.<sup>80</sup>

The result amounts to, essentially, a conspiracy of silence. This silence is maintained not just by each party's need to shield his own role in an atrocity, but also by the military standards of unquestioning obedience and "loyalty," plus, of course, the paranoid aura of secrecy surrounding the prosecution of a war. These features of military culture are distilled versions of widely shared American



values, especially nationalism and a faith in our leaders (each cleverly disguised as a love for “freedom” and “democracy”), as well as a reluctance to scrutinize government action undertaken in the name of security.

When undeniable abuses do come to light, the natural response of commanders is to blame subordinates, and for subordinates to blame their commanders. Smart commanders know this, so they convey their approval of atrocities with indirect and subtle cues—winks and nods, vague orders and quiet hints—and they indulge in deliberate blindness about what is going on.<sup>81</sup> The troops often help to maintain this plausible deniability, hoping that the ambiguity of the instructions will also supply their defense.<sup>82</sup>

We would do well not to listen to such excuses. *Whether* a commander knew of misconduct is largely irrelevant once we establish that he *should have known*, that he had a *duty* to know. Ignorance, then, ceases to serve as an excuse and becomes instead a fault in its own right. The Nuremberg Tribunal advanced this principle as it weighed the responsibility of Nazi officers: “If [a commander] fails to require and obtain complete information, the dereliction of duty rests upon him and he is in no position to plead his own dereliction as a defense.”<sup>83</sup>

The International Tribunal on Yugoslavia reasoned along these same lines, concluding that commanders were responsible if they “knew or had reason to know that [their subordinates] were about to commit or had committed crimes and yet failed to take the necessary and reasonable steps to prevent or repress [those crimes] ... or to punish those who had committed them.”<sup>84</sup>

Adhering to this precedent, the Schlesinger Commission, convened by the Defense Department to report on conditions at Abu Ghraib, took a strict-liability view of command responsibility:

Although the most egregious instances of detainee abuse were caused by the aberrant behavior of a limited number of soldiers and the predilections of the non-commissioned officers on the night shift of Tier I at Abu Ghraib, the Independent Panel finds that commanding officers and their staffs at various levels failed in their duties and that such failures contributed directly or indirectly to the detainee abuse. Commanders are responsible for all their units do or fail to do, and should be held accountable for their action or inaction.<sup>85</sup>

None of this implies, however, that the principle of command responsibility excuses even the lowest-ranking soldier when he par-

ticipates in atrocities. There is also an affirmative duty to disobey unlawful orders. The Charter of the International Military Tribunal at Nuremberg stipulated: "The fact that the defendant acted pursuant to order of his government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determined that justice so required."<sup>86</sup>

Later, the Nuremberg judges added this:

That a soldier was ordered to kill or torture in violation of international law of war has never been recognized as a defense to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible.<sup>87</sup>

Of course, the Nuremberg Principles are mostly of ethical significance: they illustrate the standards by which the US judges its enemies. And these standards still leave quite a lot to argument: What constitutes a crime? How and when are soldiers expected to recognize illegal orders? What determines whether orders count as a mitigating factor? When is moral choice possible?

Different bodies have answered these questions in different ways. For instance, when it established International Tribunals for Rwanda and Yugoslavia, the UN Security Council denied that superior orders provided a defense, but in practice the Tribunal for Yugoslavia granted an exception in cases where resistance to orders would lead to immediate execution.<sup>88</sup>

Another difficulty arises in determining the ability of ordinary soldiers to judge the legality or illegality of their orders. Often the soldier responsible for carrying out the order will simply lack the information required to evaluate its lawfulness. Consider the case of a long-range artillery attack: the soldier who fires the shells cannot, on his own, know whether they are directed against legitimate military targets. Such a state of affairs raises, to my mind, serious questions about the ethics of participating in any such attack. But for obvious reasons, governments have not pursued this more fundamental question, and have instead sought to preserve the presumption that orders are legitimate unless obviously atrocious. In the trial of Lt. William L. Calley, following the My Lai massacre, the US Court of Military Appeals accepted this standard:

The acts of a subordinate done in compliance with an unlawful order given him by his superior are excused and impose no criminal liability upon him unless the superior's order is one which a man of *ordinary sense and understanding* would, under the circumstances, know to be unlawful, or if the order in question is actually known to the accused to be unlawful.<sup>89</sup>

The army sensibly trains its soldiers in the obligation to disobey without indulging in all the subtleties and nuances. One field manual boldly states, "Orders Are Not a Defense." This heading is followed by the explanation: "Although you are responsible for promptly obeying all legal orders ... you are obligated to disobey an order to commit a crime."<sup>90</sup> In theory, soldiers are guided by a standard more stringent than that according to which they would actually be judged.

Nevertheless, the reality of military life presses one in the opposite direction—toward obedience, away from scrutinizing one's orders. Staff Sergeant Camilo Mejía Castillo of the Florida National Guard learned this the hard way on May 21, 2004, when he was sentenced to a year in prison after refusing to return to Iraq. In his application for conscientious objector status, which was written weeks before the Abu Ghraib scandal and was still pending at the time of his trial, Mejía stated that he thought the Iraq War was "illegal and immoral" and specifically objected to the mistreatment of Iraqi prisoners.<sup>91</sup> Later he offered more detail:

These intelligence guys—I don't know who they were, CIA, DIA [Defense Intelligence Agency], or just contractors, there were three of them—they wanted three of the prisoners "softened up." That's how they put it. My commanding officer told me to keep the prisoners awake, for like 48 hours, or maybe it was longer.

So Mejía's squad locked the men in tiny metal boxes and took turns hitting the walls with sledgehammers for the next two days. "We had one guy lose his mind," Mejía said. "He started crying and begging to lie down."<sup>92</sup>

Ramsey Clark, one of Mejía's attorneys (and a former US Attorney General), noted the "incredible irony that we're prosecuting soldiers in Iraq for violations of international law and we're prosecuting a soldier here because he refused to do the same things."<sup>93</sup> Amnesty International considers Mejía a "prisoner of conscience."

## PRIMED FOR ABUSE

In October 2003, Major General Donald J. Ryder, the army provost marshal general, conducted a review of the prisons in Iraq. His report noted flawed procedures, the lack of training, an inadequate system for classifying prisoners, a shortage of staff, and too high of a prisoner-to-guard ratio—but he failed to mention any sign of abuse.<sup>94</sup>

Unlike Ryder, the International Committee of the Red Cross (ICRC) did recognize abusive practices, including

threats, insults, verbal violence, sleep deprivation caused by the playing of loud music or constant light in cells devoid of windows, tight handcuffing with flexi-cuffs causing lesions and wounds around the wrists. Punishments included being made to walk in the corridors handcuffed and naked, or with women's underwear on the head, or being handcuffed either dressed or naked to the bed bars or cell door.<sup>95</sup>

Perhaps General Ryder was simply blind to these conditions; or perhaps they failed to excite in him any concern. Either way, in retrospect, it can only be too apparent that, whether or not he saw direct evidence that torture was being practiced, he should have recognized the danger of abuse, given the conditions at Abu Ghraib.

Amnesty International identifies the following “preconditions” for torture:

Emergency or other special legislation that allows wide powers of arrest and detention may facilitate torture. ... The suspension of *habeas corpus* and other legal remedies, trials of political detainees in military courts, the lack of any independent means to examine and record a prisoner's medical condition—such conditions allow security forces to conceal evidence of torture.

Further incentives are trial procedures that do not exclude from evidence statements extracted under torture or during long periods of incommunicado detention, a government's refusal to investigate allegations of torture, its peremptory denial that torture occurs in the face of mounting evidence such as deaths in custody, its obstruction of independent domestic or international investigations about torture, and the immunity from criminal and civil prosecution given to alleged torturers.<sup>96</sup>

To a greater or lesser extent, all of these elements have been present at Abu Ghraib. The occupying forces in Iraq enjoy almost unfettered powers to stop, question, arrest, and hold whomever they choose. Prior to the scandal, the prison lacked a standard process for determining whom to hold or release, and prisoners who qualified for release were often needlessly held for long periods.<sup>97</sup> Contact between the detainees and the outside world, including access to representatives of the Red Cross, remains very limited. In some cases, the families of prisoners cannot even confirm that their missing relatives are in US custody. Perhaps more startling, the US has actually *hidden* certain prisoners from Red Cross inspectors.<sup>98</sup>

Amnesty International highlights the ideological context:

The situation contained some classic ingredients. ... In the mix was an elusive, ill-defined, and demonized enemy; shortcomings in intelligence-gathering; an official interpretation of the situation as new, unique, and requiring special measures; and an apocalyptic picture painted by government of a stark moral choice between "good and evil" faced by society and wider "civilization."<sup>99</sup>

Additional social and psychological factors were identified in a study by an air force psychiatrist. According to Colonel Henry Nelson, training lapses, lax discipline, "deplorable" living conditions, the anxiety produced by an indefinite tour of duty and persistent danger, and a "devaluation of a people" based on an ignorance of Islamic culture all worked together to bring "the worst human qualities and behaviors ... to the fore." Nelson echoes the Stanford researchers in his overall analysis: "The psychological factors of negativity, anger, and hatred combined with a desire to dominate and humiliate with[in] an unsupervised workplace."<sup>100</sup>

## CHAOS IN COMMAND

Military investigations into Abu Ghraib have stressed the role of failed leadership in creating these conditions. The Fay report cites vague rules, frequent changes in procedures, poor supervision, and a failure to respond to complaints as factors contributing to the abuse.<sup>101</sup> It goes on:

Looking beyond personal responsibility, leader responsibility, and command responsibility, systemic problems and issues also contributed to the volatile environment in which the abuse occurred. These systemic problems



included: inadequate interrogation doctrine and training, an acute shortage of MP and MI soldiers, the lack of clear lines of responsibility between the MP and MI chains of command, the lack of a clear interrogation policy for the Iraq Campaign, and intense pressure felt by the personnel on the ground to produce actionable intelligence from detainees.<sup>102</sup>

The Schlesinger Commission described the command situation like this:

Both the Director of the Joint Interrogating Center and the Commander of the 320th MP Battalion were weak and ineffective leaders. Both failed to ensure their subordinates were properly trained and supervised. They failed to establish and enforce basic soldier standards, proficiency, and accountability. ... By not communicating standards, policies, and plans to soldiers, these leaders conveyed a sense of tacit approval of abusive behaviors toward prisoners. This was particularly evident with respect to prisoner handling procedures and techniques, including unfamiliarity with the Geneva Conventions. There was a lack of discipline, and standards of behavior were not established and enforced. A lax and dysfunctional command climate took hold.<sup>103</sup>

In the absence of effective formal authority, informal authority exercised disproportionate influence—specifically, the expertise of soldiers who worked as prison guards stateside. In his report on the 800<sup>th</sup> Military Police Brigade, Major General Antonio M. Taguba notes:

Basic Army Doctrine was not widely referenced or utilized to develop the accountability practices throughout the 800th MP Brigade's subordinate units. Daily processing, accountability, and detainee care appears [*sic*] to have been made up as the operations developed with reliance on, and guidance from, junior members of the unit who had civilian corrections experience.<sup>104</sup>

If we take the assessments of the Fay, Schlesinger, and Taguba reports together, the abuses at Abu Ghraib appear not simply as the result of chaos within the prison, but as a systemic pattern by which high-ranking commanders remained conspicuously quiet about the methods to be employed, and especially about the limits of such methods. Those in regular contact with the inmates—guards and interrogators, especially—were left to figure out for themselves what tactics were acceptable and what standards would apply. The

official reports read this as a system failure, as a breakdown in discipline. But they also hint at something else. The torturers at Abu Ghraib were not just acting out their own depraved fantasies; they also referenced a body of expertise drawn from other, similar settings.

Among the “experience[d]” guards whose leadership became so important were Chip Frederick and Charles Graner.<sup>105</sup> Both men worked as prison guards in the US before being sent to Iraq. Both feature prominently in the photographs from Abu Ghraib, and Frederick was the highest-ranking soldier charged in the scandal. These men undoubtedly brought with them to Iraq the norms they learned working in the prison system at home. And, as is typical, these ring-leaders also enjoyed the encouragement and support of others with higher status—especially the agents of Military Intelligence.

#### CRUCIFIXION, OR THE STATUE OF LIBERTY

On November 4, 2003, a prisoner nicknamed “Gilligan” was forced to stand on a Meals-Ready-to-Eat [MRE] box, and wires were attached to his fingers, toes, and penis. This became one of the most haunting images of the scandal. The Iraqi public has nicknamed it “the Statue of Liberty.”<sup>106</sup>

The figure in this infamous photo is hooded and covered with a blanket, making him difficult to identify with any certainty. At least one source has named carjacking suspect Satar Jabar as the man in the picture.<sup>107</sup> But another man, Haj Ali, told Australian television that he could recognize himself in the image. Ali, who spent three months at Abu Ghraib, said that he was forced to stand until “it just felt like my eyes were popping out. You know, I got a headache, then fell down. I couldn’t stand it.” Ali also accuses his US captors of denying him food and water, beating him, and sexually assaulting him with a rifle. “Of course it has changed my life. I had simple and humble interests before. I had an ordinary life—wife, children, garden, planting. I’ve lost all that. My experience made me forget everything that was beautiful.”<sup>108</sup>

“Gilligan” may just as easily have been Abdou Hussain Saad Faleh, who described a similar incident:

On the third day, after five o’clock, Mr. Grainer [sic] came and took me to Room #37, which is the shower room, and he started punishing me. Then he brought a box of food and he made me stand on it with no clothes except a blanket. Then a tall black soldier came and put

electrified wires on my fingers and toes and on my penis,  
and I had a bag over my head.<sup>109</sup>

Sabrina Harman explains her role: "He was just standing on the box with the sandbag over his head for about an hour. I put the wires on his hands. I do not recall how. I was just joking with him and told him if he fell off he would get electrocuted."<sup>110</sup>

The photographs indicate that this technique was used at Abu Ghraib repeatedly. A less widely circulated picture from November 29, 2003, shows a man standing on two boxes. He, too, is hooded, but unlike "Gilligan" he is not covered with a blanket and no wires are visible. Instead, he is bent at the waist, hands cuffed between his knees.<sup>111</sup>

These photographs provide support for the claim that someone with expertise was directing the torture. As Darius Rejali, a leading scholar on this subject, explained in a November 2004 lecture, forced standing has long played a role in the torture of prisoners, and it is more terrible than it may first seem. Prolonged standing can cause swelling in the feet and knees, shortness of breath, and after three days, kidney failure. But how do you keep the prisoner standing beyond his normal endurance? During the 1920s, the British pioneered the use of a box to prevent the prisoner from leaning; they called this "the crucifixion." Half a century later, Brazilian torturers added the wires and renamed the technique "the Vietnam" (though it does not seem to have been used there). As Rejali concluded, the soldiers at Abu Ghraib didn't think it up for their own sadistic kicks: "You had to be part of Military Intelligence to know how to do this."<sup>112</sup>

#### THE INTELLIGENCE QUOTIENT

The military's investigators agree that Military Intelligence was involved in the abuse. Taguba found that Stephen Stephanowicz, a civilian working for the 205<sup>th</sup> Military Intelligence Brigade,

allowed and/or instructed MPs, who were not trained in interrogation techniques, to facilitate interrogations by "setting conditions" which were neither authorized [nor] in accordance with applicable regulations/policy. He clearly knew his instructions equated to physical abuse.<sup>113</sup>

And Stephanowicz was not the only MI operative orchestrating the torture. Fay listed 16 incidents in which MI encouraged or condoned abuse, and eleven in which they directly participated in it.<sup>114</sup>

The MPs involved spoke consistently of the Military Intelligence role. Sabrina Harman told the *Washington Post* that Military Intelligence “made the rules as they went.” She explained: “They would bring in one to several prisoners at a time, already hooded and cuffed. ... The job of the MP was to keep them awake, make it hell so they would talk.” With this in mind, the guards strip-searched the prisoners and then “made [them] stand or kneel for hours.” Still, it was the interrogators who determined how a prisoner would be treated:

The person who brought them in would set the standards on whether or not to be “nice.” ... If the prisoner was cooperating, then the prisoner was able to keep his jump suit, mattress, and was allowed cigarettes on request or even hot food. But if the prisoner didn’t give what they wanted, it was all taken away until [MI] decided. Sleep, food, clothes, mattresses, cigarettes were all privileges and were granted with information received.<sup>115</sup>

Graner summarized the directions coming from MI:

I was instructed to start sleep-management programs by [a civilian contractor] on three high-profile prisoners ... The prisoners were known to me as Taxi Driver, an Iraqi; Smiley, a prisoner from Yemen; and Piggy ... also a third-country national. Yell and scream at the prisoners. In Taxi Driver’s case, have him wear female under-clothing on his head. Cuff them in different standing positions when they would not remain standing on their own. And utilize loud music in the middle of the night. With Piggy, I was to use the isolation cell ...

In a word, I was to manhandle them and treat them rough. ... if a prisoner was not following your instructions, smack them around a little or use cold water, such as throwing a 1.5-liter bottle of water on them. Use sandbags as hoods always.

Graner claims that he relayed these instructions to a captain and was told, “If MI tells you to do things, it is OK, and follow their instructions.”<sup>116</sup>

An investigator asked Sergeant Javal S. Davis,

[Investigator:] You mentioned you saw various things you thought were immoral. ... What things are you referring to?

[Davis:] The sleep and food plan that was the majority of the crap. ... You see inmates stand all day and not get food

until they are scheduled to sleep. They stand for three to four hours.

[Investigator:] Why did you not inform your chain of command about this abuse?

[Davis:] Because I assumed that if they were doing anything out of the ordinary or outside the guidelines, someone would have said something. ... Also, the wing belongs to MI and it appeared MI personnel approved of the abuse.

Later he added:

[Davis:] The MI staffs, to my understanding, have been giving Graner compliments on the way he has been handling the MI holds. ... Example being statements like "Good job, they're breaking down real fast"; "They answer every question"; "They're giving out good information, finally"; and "Keep up the good work"—stuff like that.

Davis also said he heard MI tell Graner and Frederick things like "Loosen this guy up for us. Make sure he has a bad night. Make sure he gets the treatment." When asked specifically who had given such instruction, Davis said, "I don't know the name because they often don't wear uniforms, and if they do they don't have name tapes."<sup>117</sup>

He describes the general state of things at Tier IA:

I never saw a set of rules or SOP [Standard Operating Procedure] for that section—just word of mouth. ... I did see paperwork provided by MI Soldiers regulating sleep and meals for some of the MI-hold prisoners. ... the agents and MI soldiers would ask [Graner] to do things, but nothing was ever in writing, he would complain.

Other agencies also played a role. Davis said,

On the night shift, FBI, OGA, CID [Criminal Investigations Division], MI would be in and out of the wing, interrogating prisoners, bringing them in, or taking them away to the wood hut behind the hard site or away period. ... Someone was always there from the other agencies or military personnel, it seemed.<sup>118</sup>

Brigadier General Janis Karpinski, the commander of the 800<sup>th</sup> MP Brigade and the top-ranking authority at Abu Ghraib, admits that she didn't know who was operating in her jail:

I thought most of the civilians there were interpreters, but there were some civilians that I didn't know. I called them the disappearing ghosts. I'd see them once in



a while at Abu Ghraib and then I'd see them months later ... always bringing in somebody for interrogation or waiting to collect somebody going out.<sup>119</sup>

The involvement of intelligence agencies points to a grim conclusion: that the torture of prisoners at Abu Ghraib was something beyond the brutal hijinks of a few ill-mannered guards. The direction offered by the intelligence services demonstrates that there is an actual system behind the abuse, and also offers some hint as to the nature of that system.

The brutal torture and obscene humiliation visited upon the prisoners at Abu Ghraib is horrifying in its own right. But it seems even worse when viewed in the context of urban sieges, military checkpoints, house-to-house searches, midnight raids, and seemingly indiscriminate arrests—all of which, in turn, are accompanied by their own violence and indignities. The Red Cross writes:

Arrests as described in these allegations tended to follow a pattern. Arresting authorities entered houses usually after dark, breaking down doors, waking up residents roughly, yelling orders, forcing family members into one room under military guard while searching the rest of the house and further breaking doors, cabinets, and other property. They arrested suspects, tying their hands in the back with flexi-cuffs, hooding them, and taking them away. Sometimes they arrested all adult males present in a house, including elderly, handicapped, or sick people. Treatment often included pushing people around, insulting, taking aim with rifles, punching and kicking and striking with rifles. Individuals were often led away in whatever they happened to be wearing at the time of arrest—sometimes in pyjamas or underwear—and were denied the opportunity to gather a few essential belongings, such as clothing, hygiene items, medicine, or eyeglasses. ... Military intelligence officers told the ICRC that in their estimate between 70% and 90% of the persons deprived of their liberty in Iraq had been arrested by mistake.<sup>120</sup>

In short, the torture of Abu Ghraib cannot be separated from the terrorizing of the population as a whole. Torture, indeed, is a key element of the occupation.

## THE LINES OF RESPONSIBILITY

It is clear that low-level troops, their commanders, and various civilian agents all share in the responsibility for the abuse at Abu Ghraib. Both command and line staff failed in their duties, and institutional arrangements were such that torture was a predictable, almost certain, outcome. With a confused command structure, vague rules, poor supervision, little training, and limited oversight, plus the pressure to deliver intelligence, the stress of understaffing and bad security, and the active encouragement of abuse from those with authority—one would have a hard time designing a situation more likely to lead to torture.

So far, the enlisted personnel have paid more dearly for their involvement than have their superiors. Charles Graner, Ivan Frederick, Jeremy Sivits, Javal Davis, Sabrina Harman, and Lynndie England have all been sent to prison. Lieutenant Colonel Jerry Phillabaum was forced into retirement. Colonel Thomas Pappas was reprimanded and relieved of command. And Brigadier General Janis Karpinski was relieved of command, reduced in rank (to colonel), and will be allowed to retire.<sup>121</sup>

In fact, the lines of responsibility extend much further. The system of torture, of which our study of Abu Ghraib has only provided a first glimpse, reaches around the world as a powerful instrument of American governance. In the context of the "War on Terror,"<sup>122</sup> the abuses at Abu Ghraib can be traced without much difficulty to policy decisions made months before at the White House and Pentagon. These decisions, and the War on Terror itself, must be understood in terms of a larger imperial project—specifically, the US quest for global dominance.

This quest and the use of torture in its pursuit are not new. While at some times more bellicose than at others, the US government has, since its beginning, consistently pressed to expand its sphere of influence and to intensify its control over the resources available within that sphere. Its methods in this regard have never been very nice.<sup>123</sup>

The War on Terror—a global war, as President Bush frequently reminds us, fought on many fronts—has put some of our current methods on public display, even in the US itself. Among these methods are the torture techniques here described, but also the "shock and awe" blitz, the shootings at checkpoints, and the siege of Fallujah; less discussed, and certainly less *seen*, are village massacres in Afghanistan, the suffocating cells at Guantánamo, the kidnapping of foreign nationals, the rounding up of Middle Eastern

immigrants. These crimes have been explained, when they have been explained, in terms of desperate measures for desperate times and the hard realities of our new post-9/11 world.

But reality has always been hard, at least where the exercise of power is concerned. It's just that it has usually not been apparent to—or acknowledged by—the privileged classes of the United States. And the methods that have recently shocked our national conscience are not without their precedents in our history. They do not show us as much, really, about whatever changes have occurred since September 11, 2001, as they tell us about our government, its ambitions, and the precarious state of our rights.

## NOTES

- <sup>1</sup> "President Bush Addresses Nation on the Capture of Saddam Hussein (press release)," December 14, 2003. <http://www.whitehouse.gov/news/releases/2003/12/20031214-3.html> (accessed February 9, 2005).
- <sup>2</sup> The photographs are included in Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror* (New York: New York Review Books, 2004), 217–224.
- <sup>3</sup> Quoted in Seymour M. Hersh, *Chain of Command: The Road From 9/11 to Abu Ghraib* (New York: HarperCollins, 2004), 24.
- <sup>4</sup> Quoted in Christian Davenport, "MPs Were Told to 'Rough Them Up,'" *Washington Post*, May 24, 2004.
- <sup>5</sup> Nori Samir Gunbar Al-Yasseri, "Sworn Statement" (January 17, 2004) in Danner, *Torture and Truth*, 237.
- <sup>6</sup> Quoted in Hersh, *Chain of Command*, 24. Wisdom reported the incident to his superiors, and assumed "the issue was taken care of." Quoted in Hersh, *Chain of Command*, 25.
- <sup>7</sup> Al-Yasseri, "Sworn Statement," 236.
- <sup>8</sup> Quoted in Scott Higham and Joe Stephens, "Punishment and Amusement: Documents Indicate 3 Photos Were Not Staged for Interrogations," *Washington Post*, May 22, 2004.
- <sup>9</sup> Hussein Mohssein Mata Al-Zayyadi, "Translation of Statement Provided by Hussein Mohssein Mata Al-Zayyadi" (January 18, 2004), in Danner, *Torture and Truth*, 240. Paragraph breaks added.
- <sup>10</sup> Al-Yasseri, "Sworn Statement," 236.
- <sup>11</sup> Quoted in Davenport, "MPs Were Told to 'Rough Them Up.'"
- <sup>12</sup> Quoted in Higham and Stephens, "Punishment and Amusement."
- <sup>13</sup> Quoted in Davenport, "MPs Were Told to 'Rough Them Up.'"
- <sup>14</sup> Quoted in Hersh, *Chain of Command*, 45.
- <sup>15</sup> Quoted in Jackie Spinner, "MP Captain Tells of Efforts to Hide Details of Detainee's Death," *Washington Post*, June 25, 2004.

- <sup>16</sup> Associated Press, "Hanging Blamed in Iraqi Death," *Portland [OR] Observer*, February 23, 2005.
- <sup>17</sup> Spinner, "MP Captain Tells of Efforts." For the autopsy report, see ACLU, "Autopsy Reports Reveal Homicides of Detainees in US Custody" (October 24, 2005), <http://action.aclu.org/torturefoia/released/102405/> (accessed December 20, 2005).
- <sup>18</sup> Mustafa Jassim Mustafa, "Translation of Statement Provided by Mustafa Jassim Mustafa" (January 18, 2004), in Danner, *Torture and Truth*, 238–239.
- <sup>19</sup> Kasim Mahaddi Hilas, "Translation of Statement Provided by Kasim Mehaddi Hilas" (January 18, 2004), in *ibid.*, 242–243.
- <sup>20</sup> George R. Fay, "AR 15-6 Investigation of the Abu Ghraib Detention Facility and the 205th Military Intelligence Brigade" (August 23, 2004), in *ibid.*, 510–511.
- <sup>21</sup> [Anonymous], "Translation of Sworn Statement by [name redacted]" (January 21, 2004), in *ibid.*, 248. Paragraph breaks added.  
General Fay concluded: "Based on the details provided by the detainee and the close correlation to other known MP abuses, it is highly probable Detainee-07's allegations are true." Fay, "AR 15-6 Investigation," 510–511.
- <sup>22</sup> *Ibid.*, 515–516.
- <sup>23</sup> Ameen Sa'eed Al-Sheikh, "Sworn Statement" (January 16, 2004), in Danner, *Torture and Truth*, 227.
- <sup>24</sup> *Ibid.*, 227. Paragraph breaks added.
- <sup>25</sup> Fay, "AR 15-6 Investigation," 516.
- <sup>26</sup> Quoted in *ibid.*
- <sup>27</sup> Quoted in Tara McKelvey, "Unusual Suspects," *American Prospect*, February 2005, 22.
- <sup>28</sup> Luke Harding, "After Abu Ghraib," *Guardian*, September 20, 2004.
- <sup>29</sup> McKelvey, "Unusual Suspects," 20. The Geneva Conventions demand that people only be punished for offenses they personally have committed. Besides which, to arrest women simply because they are related to or associated with male suspects would seem to come dangerously close to hostage taking.
- <sup>30</sup> Quoted in *ibid.*, 22.
- <sup>31</sup> Quoted in Harding, "After Abu Ghraib."
- <sup>32</sup> "The abusing, intimidation, and sexual assault of these women in Iraqi culture is considered a reflection on the manhood of their men and the honor of their families. A woman who is raped or assaulted in Iraq is seen as bringing shame upon her family, and is doubly victimized by being subjected to denial, ostracism or even death when she is released. In addition, she certainly cannot report these crimes to the Coalition, which has perpetrated them and even if it would not make the matter

worse, [as of this writing] there is no Iraqi legal infrastructure in place to protect these women from being victimized again by their families. Because of this, Iraqi women are afraid to report what has happened to them and thus these sexual assaults by Coalition forces may never be truly documented." Lucinda Marshall, "The Misogynist Undercurrents of Abu Ghraib," *Dissident Voice*, May 18, 2004, <http://www.dissident-voice.org/May2004/Marshall0518.htm> (accessed June 6, 2005).

<sup>33</sup> Lisa Crooms and Judith Kegan Gardiner comment: "The stories and images of men as victims of sexual abuse, humiliation, and intimidation may seem particularly egregious because such treatment challenges their gender identity, making their feminization a central part of the military's tactics in breaking down the Iraqis and bringing them under control. If this is the case, then the abuse of female detainees is all too ordinary." Lisa Crooms and Judith Kegan Gardiner, "The Prison Issue: Preface," *Feminist Studies* 30, no. 2 (Summer 2004), 201.

<sup>34</sup> Fay, "AR 15-6 Investigation," 508 and 527; and Hersh, *Chain of Command*, 43.

<sup>35</sup> The one partial exception is Lieutenant General Anthony Jones's addendum to Major General Fay's otherwise candid report. Jones's contribution was added after Fay's investigation was completed, ostensibly to examine the role of higher-ranking officers. In reality, Jones's preface adds nothing of substance to Fay's work and serves primarily as damage control for the Pentagon and senior officials. Among its logical flaws, Jones's report insists on an artificial distinction between "intentional violent or sexual abuses" and "actions taken based on misinterpretation of law or policy"—a distinction that repeatedly breaks down in the discussion of specific cases. Anthony R. Jones, "AR 15-6 Investigation of the Abu Ghraib Prison and 205th Military Intelligence Brigade" (August 23, 2004), in Danner, *Torture and Truth*, 423.

Since Jones's conclusions are at odds with the evidence and analysis of the Fay report, I have chosen to break from convention, referring to "the Jones report" (which I cite only in passing) and "the Fay report" (which I discuss extensively) rather than treating them together as "the Jones/Fay report."

<sup>36</sup> Fay, "AR 15-6 Investigation," 507. Schlesinger is a former Rand Corporation researcher, Atomic Energy Commission chair, CIA director, and secretary of defense (during the Nixon and Ford administrations). As secretary of defense he was a post-Vietnam hawk concerned to restore the United States' military prestige. United States Department of Defense, "Secretaries of Defense: James Schlesinger," [http://www.defenselink.mil/specials/secdef\\_histories/](http://www.defenselink.mil/specials/secdef_histories/) (accessed December 6, 2005).

<sup>37</sup> Fay, "AR 15-6 Investigation," 443.



<sup>38</sup> [James R. Schlesinger, chair], "Final Report of the Independent Panel to Review DoD Operations (The Schlesinger Report)" (August 2004), in Danner, *Torture and Truth*, 344.

<sup>39</sup> Fay, "AR 15-6 Investigation," 528.

<sup>40</sup> *Ibid.*, 531.

<sup>41</sup> Quoted in Jackie Spinner, "Unit's Role Was to Break Down Prisoners: Reservist Tells of Orders From Intelligence Officers," *Washington Post*, May 8, 2004.

<sup>42</sup> Quoted in T. R. Reid, "Graner Gets 10 Years for Abuse at Abu Ghraib: Ex-Guard Said He Was Ordered to Mistreat Iraqis," *Washington Post*, January 16, 2005.

<sup>43</sup> Much of my treatment of the legal issues here derives from Human Rights Watch, "The Legal Prohibition Against Torture" (June 1, 2004).

I also consulted: US Department of State, "Initial Report of the United States of America to the UN Committee Against Torture" (October 15, 1999), [http://www.state.gov/www/global/human\\_rights/torture\\_toc99.html](http://www.state.gov/www/global/human_rights/torture_toc99.html) (accessed October 22, 2004).

I used the primary documents collected in Office of the [UN] High Commissioner for Human Rights and International Training Centre of the ILO [International Labour Organisation], *Basic Human Rights Instruments* (Geneva: United Nations Centre for Human Rights; Turin: International Centre of the ILO, October 1998); and W. Michael Reisman and Chris T. Antoniou, eds., *The Laws of War: A Comprehensive Collection of Primary Documents on International Laws Governing Armed Conflict* (New York: Vintage Books, 1994).

Unless otherwise noted, quotes attributed to various treaties or laws are drawn from these sources.

<sup>44</sup> Emphasis added. Article 14 reiterates the point: "Prisoners of war are entitled in all circumstances to respect for their persons and their honour."

<sup>45</sup> Article 27 of the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War stipulates, "Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity."

"Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."

<sup>46</sup> This fact seems to have been conveniently forgotten by US policy makers as they sketched out the previously unknown "unlawful combatant" category and insisted that the Geneva Conventions couldn't apply to

those so designated. The full significance of this decision will be considered in the next chapter.

- <sup>47</sup> Similar provisions are also present in the American Convention on Human Rights (which the US signed in 1977, but never ratified); the International Covenant on Civil and Political Rights, Article 7 (ratified by the United States in 1992); and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (ratified in 1994).
- <sup>48</sup> US Department of State, "Initial Report."
- <sup>49</sup> Amnesty International, "United States of America: Human Dignity Denied: Torture and Accountability in the 'War on Terror'" (October 27, 2004); and Human Rights Watch, "Summary of International and Other US Law Prohibiting Torture and Other Ill-Treatment of Persons in Custody" (May 24, 2004).
- <sup>50</sup> For instance, in 1979 the General Assembly adopted this commentary on Article 5 of the Code of Conduct for Law Enforcement Officials: "The term 'cruel, inhuman, or degrading treatment or punishment' has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental." Quoted in Amnesty International, *Torture in the Eighties* (London: Amnesty International, 1984), 14.
- <sup>51</sup> US Department of State, "Initial Report."
- <sup>52</sup> Jay S. Bybee, "Memorandum for Alberto R. Gonzales, Counsel to the President, Re: Standards of Conduct for Interrogation Under 18 USC [Sections] 2340–2340A." in Danner, *Torture and Truth*, 116.
- <sup>53</sup> Bybee, "Memorandum," 115. I discuss the consequences of such interpretations in Chapter 2.
- <sup>54</sup> Quoted in Amnesty International, *Combating Torture: A Manual for Action* (London: Amnesty International, 2003), 82.
- <sup>55</sup> "The victim's suffering—indeed, the victim—is being used entirely as a means to an end over which the victim has no control. Terroristic torture is a pure case—the purest possible case—of the violation of the Kantian principle that no person may be used *only* as a means. The victim is simply the site at which great pain occurs so that others may know about it and be frightened by the prospect." Henry Shue, "Torture," *Philosophy and Public Affairs* 7, no. 2 (1978) 132. Emphasis in original.
- <sup>56</sup> Compare my definition to the following legal formulations:  
The federal anti-torture statute (18 USC Section 2340) defines torture as an "act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." Quoted in Bybee, "Memorandum," 3.

Article 1 of the UN Convention Against Torture defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him [sic] or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions."

<sup>57</sup> Quoted in Amnesty International, *Combating Torture*, 76.

<sup>58</sup> Abraham McLaughlin and Seth Stern, "How Far Americans Would Go to Fight Terror," *Christian Science Monitor*, November 14, 2001.

<sup>59</sup> Richard Morin and Claudia Deane, "Americans Split on How to Interrogate: Majority Polled Oppose Using Torture," *Washington Post*, May 28, 2004.

<sup>60</sup> One source reports that, in October 2001, 45 percent approved of the use of torture to prevent future terrorist attacks, but by January 2005 that figure had dropped to 39 percent. The public's appetite for extreme measures seems to have mellowed overall during that same period. In 2001, 77 percent were willing to "assassinate known terrorists," 52 percent to "assassinate leaders of countries that harbor terrorists," and 34 percent to "use nuclear weapons to attack terrorist facilities." By 2005, these numbers were down to 65 percent, 37 percent, and 27 percent, respectively. "USA Today/CNN/Gallup Poll Results," January 12, 2005, <http://www.usatoday.com/news/polls/tables/live/2005-01-10-poll.htm> (accessed January 24, 2005).

<sup>61</sup> "USA Today/CNN/Gallup Poll Results," January 12, 2005.

<sup>62</sup> It is also interesting to note that "women and lower-income Americans were significantly less likely to approve of the strategic use of torture." Morin and Deane, "Americans Split on How to Interrogate."

<sup>63</sup> Yet another poll found that "majorities of Republicans, Democrats, and independents agreed that the kind of abuse depicted in [the Abu Ghraib] photographs is unacceptable, even in time of war." Richard Morin and Claudia Deane, "Most Want Rumsfeld to Stay, Poll Finds," *Washington Post*, May 8, 2004.

<sup>64</sup> Which is not to suggest that such standards are universally accepted. According to a CNN/Gallup Poll, 20 percent of Americans said the abuses at Abu Ghraib did not bother them "much" or "at all." Walter Shapiro, "Senator 'Outraged' by Reaction to Prisoner Abuse," *USA Today*, May 12, 2004.

<sup>65</sup> Stanley Milgram, *Obedience to Authority: An Experimental View* (New York: Harper & Row, 1974), 4.

<sup>66</sup> Ibid., 69.

<sup>67</sup> Ibid., 4–5. For a review of the experimental variations and reproductions of Milgram's results, see Thomas Blass, "The Milgram Paradigm After 35 Years: Some Things We Now Know About Obedience to Authority," in *Obedience to Authority: Current Perspectives on the Milgram Paradigm*, ed. Thomas Blass, (Mahwah, NJ: Lawrence Erlbaum, 2000) 35–59.

<sup>68</sup> Milgram, *Obedience to Authority*, 138–142.

<sup>69</sup> Ibid., 186–187.

<sup>70</sup> *Quiet Rage: The Stanford Prison Experiment*, dir. Ken Musen, 1985.

<sup>71</sup> *Quiet Rage*; and Philip G. Zimbardo, Christina Maslach, and Craig Haney, "Reflections on the Stanford Prison Experiment: Genesis, Transformations, Consequences," in Blass, *Obedience to Authority*, 201–203.

M. S. Embser-Herbert recounts a similar experience in the 1970s during a military training exercise to help soldiers survive capture. Like the students at Stanford, her unit was divided into prisoners and guards. "As the day wore on, [the guards] got more and more carried away with their role and started pushing the boundaries. You know—where they grabbed, how they grabbed." M. S. Embser-Herbert, "When Women Abuse Power, Too," *Washington Post*, May 16, 2004.

<sup>72</sup> Quoted in *Quiet Rage*.

<sup>73</sup> Quoted in Human Rights Watch, *Cold Storage: Super-Maximum Security Confinement in Indiana*, (New York: 1997), 61.

The methodology of the Stanford experiment is somewhat suspect, but its results cannot be dismissed out of hand. I think the safest approach is to consider it as a particularly illustrative anecdote, rather than as a piece of science.

<sup>74</sup> Mark J. Osiel, *Obeying Orders: Atrocity, Military Discipline & the Law of War* (New Brunswick, NJ: Transaction Publishers, 2002), 173.

<sup>75</sup> Quoted in R. Jeffrey Smith, "General Is Said to Have Urged Use of Dogs," *Washington Post*, May 26, 2004.

<sup>76</sup> Fay, "AR 15-6 Investigation," 519–521.

<sup>77</sup> Quoted in Smith, "General Is Said to Have Urged Use of Dogs."

Specialist Tony Lagouranis, who worked as an Army interrogator at Abu Ghraib (and elsewhere in Iraq), explained that "we would bring in military working dogs and use them on the prisoners. Even though it was controlled; like the dogs were muzzled, they were being held by a handler. But the prisoner didn't know that because he was blindfolded. ... So when I would ask the prisoner a question and I didn't like the answer, I would cue the handler so the dog would bark and jump on the prisoner. But he wasn't able to bite him. ... Sometimes they would wet their jumpsuits because they were so scared, you know? Especially because they'd have a blindfold and they can't figure it out—you know, that's a pretty terrifying position to be in." Quoted in "The Torture

Question; Interview: Tony Lagouranis," *Frontline* [PBS], September 25, 2005, <http://www.pbs.org/wgbh/pages/frontline/torture/interviews/lagouranis.html> (accessed November 15, 2005).

- <sup>78</sup> It may be noted that none of the measures mentioned here seek to address the *political* causes of torture. This oversight is unfortunately typical of the human rights literature, perhaps because of the strict "neutrality" of groups like Amnesty International and the Red Cross.

I discuss political solutions in the Conclusion.

- <sup>79</sup> "German soldiers in World War II on the Eastern Front remained loyal to superiors largely because of shared responsibility for atrocities against civilians and POWs. ... Their superiors self-consciously employed this barbarization effect to their own ends, successfully securing a spectacular measure of discipline and cohesion under the most adverse of combat circumstances." Osiel, *Obeying Orders*, 155.

- <sup>80</sup> There are also the usual feelings of personal loyalty to contend with. Specialist Joseph Darby, an MP at Abu Ghraib, anonymously sent the photographs to the Army Criminal Investigations Division. Only later did he come forward with a sworn statement. He explained, "It was a hard call to have to make the decision to put your friends in prison." Quoted in Josh White, "Soldier Who Reported Abuse Testifies: 'It Was a Hard Call,'" *Washington Post*, August 7, 2004.

- <sup>81</sup> Osiel, *Obeying Orders*, 129.

- <sup>82</sup> *Ibid.*, 323.

- <sup>83</sup> Quoted in Sanford Levinson, "Responsibility for Crimes of War," in *War and Moral Responsibility*, eds. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton, NJ: Princeton University Press, 1974), 119.

- <sup>84</sup> Quoted in Osiel, *Obeying Orders*, 192.

- <sup>85</sup> Schlesinger, "Final Report," 351. Dinah Pokempner reviews the principles of command responsibility, applies them to the Abu Ghraib scandal, and takes the further step of considering the standards of responsibility for political leaders:

"The most striking feature of the scandal so far has been the relative lack of consequence to those in high position. While there are various theories of responsibility—moral, political, and legal—the very concept of responsibility entails the potential for consequence, be it public opprobrium, reprimand, discipline, dismissal, disqualification, economic sanction, or loss of freedom. Indeed, there is a sense that just as the Office of Legal Counsel sought to calculate the risk of legal liability for torture, so other political offices have calculated the social and political fallout from the scandal and concluded no further action need be taken. It may be that the official effort to divorce responsibility from any consequence may be the most damaging product of the whole experience, for it amounts to a conscious construction of impunity.



"A key question in thinking about responsibility from any point of view is the question of what leaders can be said to know about the probable results of their actions or inaction. ... At the very least, we would expect that leaders would be aware that permission to engage in some hitherto forbidden practices might invite experimentation with yet others, that the subtle distinctions between the detention regime for POWs and 'enemy combatants' might be lost on forces that at the same time were pressured to produce intelligence, that the political rhetoric demonizing the enemy could impel demonic behavior if unchecked by a demonstrated will to prevent and punish mistreatment." Dinah Pokempner, "Command Responsibility for Torture," in *Torture: Does It Make Us Safer? Is It Ever OK? A Human Rights Perspective*, ed. Kenneth Roth and Minky Worden (New York: New Press and Human Rights Watch, 2005), 168–170.

<sup>86</sup> Quoted in Richard Wasserstrom, "The Relevance of Nuremberg," in *War and Moral Responsibility*, ed. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton, NJ: Princeton University Press, 1974), 139.

<sup>87</sup> Quoted in Wasserstrom, "The Relevance of Nuremberg," 140.

<sup>88</sup> Osiel, *Obedying Orders*, 43.

<sup>89</sup> Quoted in "United States v. William L. Calley, Jr. (US Court of Military Appeals, 21 December 1973)," in Reisman and Antoniou, *The Laws of War*, 367. Emphasis in original.

<sup>90</sup> Quoted in Osiel, *Obedying Orders*, 294.

<sup>91</sup> Quoted in Amnesty International, "USA: Staff Sergeant Camilo Mejía Castillo Is a Prisoner of Conscience" (June 4, 2004).

<sup>92</sup> Quoted in Christian Parenti, *The Freedom: Shadows and Hallucinations in Occupied Iraq* (New York: The New Press, 2004), 204–205.

<sup>93</sup> Quoted in Amnesty International, "USA: Staff Sergeant Camilo Mejía Castillo."

<sup>94</sup> Schlesinger, "Final Report," 370.

<sup>95</sup> International Committee of the Red Cross, "Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation" (February 2004), in Danner, *Torture and Truth*, 262–263.

<sup>96</sup> Amnesty International, *Torture in the Eighties*, 10–11.

<sup>97</sup> [Antonio M. Taguba], "Article 15-6 Investigation of the 800th Military Police Brigade (The Taguba Report)," in Danner, *Torture and Truth*, 301.

<sup>98</sup> Schlesinger, "Final Report," 377–378.

<sup>99</sup> Amnesty International, "USA: Human Dignity Denied."

<sup>100</sup> Quoted in R. Jeffrey Smith, "Soldiers Vented Frustration, Doctor Says: Psychiatrist Studied Interviews With Guards Accused of Abusing Iraqi Detainees," *Washington Post*, May 24, 2004.

Appendix G of the Schlesinger report offers a worthy overview of the psychological factors in play, citing the Stanford Prison Experiment specifically (394–395).

<sup>101</sup> Fay, "AR 15-6 Investigation," 443.

<sup>102</sup> Ibid., 444. A memo from the summer of 2003, signed by Captain William Ponce, Jr., read, in part: "The gloves are coming off gentlemen regarding these detainees. ... Col. [Steven] Boltz has made it clear that we want these individuals broken. Casualties are mounting and we need to start gathering info to help protect our fellow soldiers from any further attempts." Quoted in "Memo Appealed for Ways to Break Iraqi Detainees," *Washington Post*, August 23, 2004.

<sup>103</sup> Schlesinger, "Final Report," 371. The failure to instruct soldiers in the laws of war is itself a violation of the Geneva Conventions, specifically of Article 127 of the Third Convention. See Reisman and Antoniou, *Laws of War*, 39.

<sup>104</sup> Taguba, "Article 15-6 Investigation," 300.

<sup>105</sup> For an interesting analysis of Charles Graner's stateside preparation in SCI Greene, a supermax prison in Waynesburg, Pennsylvania, see Sasha Abramsky, "Seeds of Abu Ghraib," *Nation*, December 26, 2005, 20–26.

<sup>106</sup> Quoted in Brooke Warner, "Abu Ghraib and a New Generation of Soldiers," in *Abu Ghraib: The Politics of Torture* (Berkeley, CA: North Atlantic Books, 2004) 79.

<sup>107</sup> Warner, "Abu Ghraib and a New Generation of Soldiers," 79.

<sup>108</sup> Olivia Rousset, "Lifting the Hood: The Prisoners of Abu Ghraib," *Dateline* [SBS/Australia], November 9, 2005, <http://news.sbs.com.au/dateline/index.php?page=archive&daysum=2005-11-09#> (accessed November 15, 2005).

<sup>109</sup> Abdou Hussain Saad Faleh, "Translation of Statement Provided by Abdou Hussain Saad Faleh" (January 16, 2004) in Danner, *Torture and Truth*, 230.

<sup>110</sup> Quoted in Josh White and Christian Davenport, "Soldiers and Detainees Tell Stories Behind the Pictures," *Washington Post*, May 22, 2004.

<sup>111</sup> The photos appear in Danner, *Torture and Truth*, 221, 223.

<sup>112</sup> Darius Rejali, "Speaking Frankly About Torture" (lecture, Reed College, Portland, OR, November 13, 2004).

For historical and narrative accounts of forced standing, as well as sleep deprivation, waterboarding, and other techniques, see Human Rights Watch, "Descriptions of Techniques Allegedly Authorized by the CIA" (November 21, 2005).

<sup>113</sup> Taguba, "Article 15-6 Investigation," 323–324.

<sup>114</sup> Fay, "AR 15-6 Investigation," 443.

<sup>115</sup> Quoted in Spinner, "Unit's Role."

<sup>116</sup> Quoted in Rowan Scarborough, "Abu Ghraib Convict Breaks Silence" *Washington Times* (April 13, 2005).

<sup>117</sup> Quoted in Higham and Stephens, "Punishment and Amusement."

In a 2005 *Dateline* interview, Lynndie England told Stone Phillips that she too had heard Military Intelligence personnel offer encouragement to Graner, even when he showed them the notorious photos.

"[England:] Yeah, he'd show him and he'd show command and they'd be like, 'Oh, just keep up the good work.'

[Phillips:] And do you know that he did this, or did he just tell you?

[England:] I was there. I was there. I seen him show the MI.

[Phillips:] Pictures of the naked detainees.

[England:] Pyramids, all that. And they're like, 'Oh, wow, can I get a copy of that?'" Stone Phillips, "Behind the Abu Ghraib Photos," *Dateline NBC*, October 2, 2005. <http://msnbc.msn.com/id/9532670/> (accessed November 15, 2005).

<sup>118</sup> Quoted in Higham and Stephens, "Punishment and Amusement."

<sup>119</sup> Hersh, *Chain of Command*, 61.

<sup>120</sup> ICRC, "Report," 256–257.

<sup>121</sup> Graner received the longest sentence, ten years. Frederick got eight, and England three. The rest were sentenced to a year or less. Janis Karpinski, *One Woman's Army: The Commanding General of Abu Ghraib Tells Her Story* (New York: Miramax Books, 2005), 227–228, 231, 233–234, 236; and Phillips, "Behind the Abu Ghraib Photos."

Karpinski's book predictably seeks to minimize her responsibility for the scandal. She writes, "My fault lay not in what I knew, but in what I didn't know—and should have known." Karpinski, *One Woman's Army*, 13.

<sup>122</sup> I've used the phrase "War on Terror," here and throughout the book, only with the greatest reservations. The term, being a bit of Pentagon branding, is neither neutral nor accurate. The idea is, in fact, a bit of an absurdity, as retired US Army General William Odom made clear: "Terrorism is not an enemy. It cannot be defeated. It's a tactic. It's about as sensible to say we declare war on night attacks and expect we're going to win that war." Quoted in Norman Solomon, "Terrorism, 'the War on Terror,' and the Message of Carnage" *Portland [OR] Alliance*, August 2005.

The war, in truth, *employs* terror at least as much as it opposes it. Yet the label does have a certain utility, since it covers a range of related phenomena—including the bombing of Afghanistan, the invasion of Iraq, the curtailment of civil liberties in the US, and so on—and identifies them as elements in a larger project.

<sup>123</sup> In 1901, the Philadelphia *Ledger's* correspondent in Manila wrote of US actions in the Philippines: "The present war is no bloodless, opera bouffe engagement; our men have been relentless, have killed to exter-

minate men, women, children, prisoners and captives, active insurgents and suspected people from lads of ten up, the idea prevailing that the Filipino as such was little better than a dog. Our soldiers have pumped salt water into men to make them talk, and have taken prisoner people who held up their hands and peacefully surrendered, and an hour later, without an atom of evidence to show that they were even *insurrectos*, stood them on a bridge and shot them down one by one, to drop into the water below and float down, as examples to those who found their bullet-loaded corpses." Quoted in Howard Zinn, *A People's History of the United States, 1492–Present* (New York: HarperPerennial, 1995), 308.

## CHAPTER 2

# A “NEW PARADIGM”

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NO ONE SHOULD HAVE been surprised by the events in Abu Ghraib.

A year and a half before the photos were published, on December 29, 2002, the *Guardian* reported:

US officials have admitted that suspects captured in the region are “softened up” on their way to detention by brutal beatings from US military police and special forces soldiers. They are confined to tiny rooms, blindfolded and thrown into walls. They are tied up in painful positions, subjected to loud noises, and deprived of sleep by having lights shine on them day and night. Sometimes they are forced to stand for long periods in black hoods or wearing goggles which have been spray-painted so as to render them blind. ...

Those who do not crack, or perhaps have nothing to tell, are often handed over to foreign intelligence services such as those of Morocco or Saudi Arabia, where less sophisticated and bloodier torture techniques are regularly employed.<sup>1</sup>

And it wasn’t just the press that saw that something was awry. In June 2003, Senators Patrick Leahy and Arlen Specter wrote to national security advisor Condoleezza Rice (now secretary of state), concerned about the persistent reports of abuse. Leahy wrote:

Unnamed administration officials suggested in several press accounts that detainees held by the United States have been subjected to “stress and duress” interrogation techniques, including beating, [and] lengthy sleep and food deprivation.

Specter asked for “clarification about numerous stories concerning alleged mistreatment of enemy combatants in US custody.”<sup>2</sup>

That August, the head US bureaucrat in Iraq, L. Paul Bremer, urged the military to improve the conditions in its prisons, and forwarded his concerns to Rice, Secretary of Defense Rumsfeld, and President Bush.<sup>3</sup> Around the same time, the army began court-martial procedures against four reservists accused of beating several



POWs while transporting them to a processing center in Umm Qasr. Two months later, eight more reservists—Marines this time—were accused of abusing detainees, including charges of negligent homicide. In January 2004, three reservists were discharged and ordered to forfeit pay for abusing Iraqi prisoners. All the while, horror stories from former prisoners continued to appear in the international press. The Red Cross issued (in the words of ICRC president Jakob Kellenberg) "repeated requests" and raised "serious concerns." And Amnesty International and Human Rights Watch consistently pressed the Bush administration to demonstrate its compliance with international law.<sup>4</sup>

Amnesty International publicly reported the abuse of prisoners by US military personnel as early as April 2002. Then, ten months before the Abu Ghraib scandal, Amnesty reported abuse in Iraq, including hooding, sleep deprivation, and forced standing. The government offered no reply.<sup>5</sup>

## TWO THEORIES

There are two common explanations for the abuse at Abu Ghraib.

The first, which has by far gotten the greatest circulation, is the official position of the Bush administration. Stated plainly, the idea is that a few sadistic "hillbillies" took advantage of their supervisor's permissive managerial style, and things got out of hand.

Senator James M. Inhofe has forcefully advocated this view:

We have seven bad guards. ... And I stress that that's seven out of 700 in that prison. They did things they should not have done. They are being punished. And they were being punished long before those pictures came out, so that's all behind us. It's been taken care of.<sup>6</sup>

This smug assuredness contrasts sharply with the other major explanation, which can be characterized as

the migration of interrogation techniques from Afghanistan to Iraq. ... More important, their authorization in Afghanistan and Guantánamo was possible only because the President had determined that individuals subjected to these interrogation techniques fell outside the strict protections of the Geneva Conventions."<sup>7</sup>

In other words, policy decisions, including those of the president, established interrogation practices in Afghanistan and Guantánamo Bay that then "migrated" to Iraq.<sup>8</sup> Despite the equivocations and

euphemisms of its report, this is the core finding of the Defense Department's Schlesinger Commission.

Of the two explanations, the migration theory is clearly the one that more honestly tries to address itself to the known facts. Schlesinger estimates that there have been about 300 reports of abuse in Afghanistan, Guantánamo, and Iraq, "many of them beyond Abu Ghraib. So the abuses were not limited to a few individuals."<sup>9</sup> Likewise, on November 8, 2004, eight retired generals wrote to Bush that

no fewer than a hundred criminal, military, and administrative inquiries have been launched into apparently improper or unlawful US practices related to detention and interrogation. Given the range of individuals and locations involved in these reports, it is simply no longer possible to view these allegations as a few instances of an isolated problem.<sup>10</sup>

Of course Bush knows this; anyone who cares to seriously look into the matter has to know this. And so the fact that a debate is possible—not about how far up the chain of command culpability extends, but about whether torture is a widespread practice—has to be seen as a major victory for the administration's public relations team. But the debate, as it has been portrayed in mainstream US media, only impedes the public's understanding of the real issues.

There are, in fact, at least two sides to this debate, but they are not the sides that we are being shown. Rather than wondering if the abuses extend beyond Abu Ghraib (since the only evidence that they don't are the pronouncements of Republican politicians), we would do better to consider *how far* they extend, to examine the system that promotes torture, and to situate the events at Abu Ghraib in a political, historical, and social context that allows us to observe the underlying logic.

The Schlesinger Commission has offered one such theory. To evaluate it, we should begin by examining the policies and conditions in the military's other detention centers—most prominently, Guantánamo Bay, Cuba. And we should proceed to consider the role of these bases, and the abuses they produce, both in our current war and in the larger framework of American power. When we do, and especially when we observe the parallels between the exercise of this power domestically and overseas, we can see that the "migration" Schlesinger describes is only a magnified detail of a much larger picture.

## THE GUANTÁNAMO PAPERS

In a May 10, 2004 memo, an FBI agent reported a conversation with Major Generals Geoffrey D. Miller and Michael B. Dunlavey, the military commanders at Guantánamo Bay. During this conversation, the generals explained that Rumsfeld had authorized them to use unusually harsh methods for interrogations. The agent noted that the techniques were likely illegal and "not effective [for] producing intel that was reliable." Additionally, the generals "both agreed that the Bureau has their way of doing [sic] business and DoD has their marching orders from the SecDef."<sup>11</sup>

A few weeks later, on August 2, 2004, another FBI agent described the Defense Department's methods to his superiors:

here is a brief summary of what I observed at GTMO [Guantánamo]. On a couple of occasions [sic], I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food, or water. Most times they had urinated or defecated [sic] on themselves and had been left there for 18, 24 hours or more.

On one occasion [sic], the air conditioners had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. When I asked the [guards] what was going on, I was told that interrogators from the day prior had ordered this treatment, and the detainee was not to be moved.

On another occasion [sic], the A/C had been turned off, making the temperature in the unventilated room probably well over 100 degrees. The detainee was almost unconscious on the floor with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night.

On another occasion [sic] not only was the temperature unbearably hot, but extremely loud rap music was being played in the room, and had been since the day before, with the detainee chained hand and foot in the fetal position on the floor.<sup>12</sup>

The American Civil Liberties Union (ACLU) has used the Freedom of Information Act to force the government's release of literally thousands of similar documents covering a two-year period, beginning August 2002. They show that FBI agents reported the excessive use of restraints, the denial of food, water, and toilet access, the use of growling dogs to intimidate detainees, extreme temperatures, and other inhumane conditions.

### GUANTÁNAMO BAY: "THE GULAG OF OUR TIMES"<sup>13</sup>

For more than a century, the Guantánamo Bay Naval Base has been a symbol of US imperialism. The base, which occupies 31 square miles in southeast Cuba, has been occupied continuously since the Spanish-American War. That war promised to liberate the Cuban people from colonial servitude and avenge the (still unexplained) sinking of a US battleship, the *Maine*, in 1898. Instead, it delivered Cuba's wealth into the hands of US firms, forced its new government to accept a constitution granting the US "the right to intervene" militarily in the country's affairs, and created a series of permanent bases and refueling stations on the island.<sup>14</sup>

The 1903 treaty creating the base at Guantánamo gives the US "complete jurisdiction and control" over the area. Still, and even though crimes committed at Guantánamo are regularly prosecuted in the mainland US, the government has cynically argued that no court has authority over the base. This view fits with its complementary claim that foreign nationals held outside the US have no constitutional rights.<sup>15</sup> Together, the two positions imply that prisoners at Guantánamo are beyond the protection of the law.

All this, from the state's perspective, makes Guantánamo a perfect place for exercising maximum authority while extending literally no rights—a fine place for imprisoning refugees without having to consider their pleas for asylum, as it was used in the 1990s.<sup>16</sup> Or for operating an extra-legal prison camp where suspected terrorists are dealt with in whatever way the government sees fit. Nizar Sassi, a French detainee, summed it up in a postcard to his family: "If you want a definition of this place, you don't have the right to have rights."<sup>17</sup>

This was exactly why Guantánamo was selected to serve as the central depository for suspected terrorists from around the world. As one Pentagon official explained, "The legal advice was we could do what we wanted to do there. ... They were going to be outside any court's jurisdiction."<sup>18</sup>

On June 28, 2004, in *Rasul v. Bush*, the Supreme Court rejected the claim that Guantánamo was beyond the reach of the courts and granted detainees the legal right to challenge their detention.<sup>19</sup> In part because of legislation nullifying the Court's decision, it is still unclear whether the ruling will have any effect, or what, exactly, this legal right will mean, or how it will affect the prisoners' treatment.<sup>20</sup> So far, the Pentagon has taken the step of establishing a Combat Status Review Tribunal to hear challenges to the "enemy combatant" designation. Of its first 393 cases, the CSRT has sided

with the government in 387.<sup>21</sup> Perhaps this move satisfies the explicit requirements of the *Rasul* ruling, but it does not demonstrate any real effort to grant the prisoners their constitutional rights.

While the current administration feigns concern for public opinion and the rule of law, it continues to evade any meaningful limits on the treatment of terror suspects. It is conceivable that the military even plans to close the Guantánamo Bay prison camp—thus robbing its critics of a powerful symbol—while continuing to hold captives without the constraints of judicial oversight, public scrutiny, or human rights. Recent press reports suggest that many Guantánamo prisoners are being moved back to Afghanistan, where they are held in an archipelago of new extra-legal US military prisons.<sup>22</sup> Meanwhile, the American government is believed to be holding prisoners in at least thirty-nine other overseas locations, some run secretly by the CIA.<sup>23</sup>

#### X-RAY, DELTA, FOUR, AND FIVE

Prisoners from Afghanistan started arriving at Guantánamo Bay in January 2002. Eventually the base came to hold more than 700 prisoners from 44 countries, many captured far from any armed conflict.<sup>24</sup> Some were accused of fighting in Afghanistan, or of otherwise aiding the Taliban. Others were arrested or kidnapped—not in the midst of combat—but simply because they were thought to be connected, in some fashion, to al Qaeda or other similar groups.

At Camp X-Ray, the first detention center in the Guantánamo complex, prisoners were kept in small wire cages, which were often infested with mice, rats, frogs, snakes, and scorpions. Detainees lived in the elements, exposed to hot sun, cold nights, wind, and rain, with the added burden of floodlights illuminating the camp at night. They were not allowed to talk, and many reported that they were beaten if they prayed.<sup>25</sup> Loudspeakers around the camp periodically blared: "Cooperate and you can go home" and "A lot of people are leaving in the next few days. You can join them by cooperating."<sup>26</sup>

Asif Iqbal describes his first days in Camp X-Ray:

In my cage there were two towels, one blanket, one small toothbrush, shampoo, soap, flip flops, and an insulation mat to sleep on as well as two buckets, one of water and one to use as a toilet. ... In the first few weeks, we were not allowed any exercise at all; this meant that all day every day we were stuck in a cage of two meters by two



meters. ... During the day we were forced to sit in the cell (we couldn't lie down) in total silence. We couldn't lean on the wire fence or stand up and walk around the cage.<sup>27</sup>

Visiting the camp during its first month of operation, the Red Cross was alarmed to discover that the prisoners did not know where they were. ICRC representatives explained to the authorities that, in Arab countries, red or orange jumpsuits like those issued the detainees signify impending execution. The visiting delegates also expressed their concern that the prisoners had no privacy, no shade, no exercise, no underwear, no conversation, and inadequate sleep.<sup>28</sup>

In April 2003, detainees were transferred from X-Ray to Camp Delta. Delta was a more permanent facility designed to hold 2,000 people. Its cells are eight by six-and-a-half feet, with running water and better protection from the elements.<sup>29</sup> *Guardian* reporter David Rose describes the accommodations:

Kellogg Brown & Root's standard issue Gitmo cell is a pre-fabricated metal box, painted a faded green, a little larger than a king-size bed: fifty-six square feet. Next to the hard steel wall-mounted bed, two-and-a-half feet wide, is an Asian-style toilet (a hole in the floor) facing the open grille of the door. The guards, some of them women, are supposed to pass by the cell every thirty seconds. Next to the toilet is a small sink and a single faucet that produces tepid water that comes from a desalination plant. Like all the water at Gitmo, it's a pale shade of yellow. The faucet is so low that the only way to use it is to kneel. ... There is no air conditioning in the cell blocks. When the temperature inside reaches 86 degrees Fahrenheit, the guards are permitted to switch on ceiling fans—not in the cells, but the corridor. The lights stay on all night.<sup>30</sup>

Later, the navy added "Camp Four," the privilege camp. There 140 of the most cooperative prisoners are housed in communal dorms arranged in a large, open compound. They wear white robes rather than orange jumpsuits, and showers are available whenever they want them. The prisoners eat together and in pleasant weather play soccer and volleyball. Red Cross reports suggest that Camp Four approaches the standards required by the Geneva Conventions.<sup>31</sup>

At the opposite end of the spectrum is the discipline block, where prisoners are kept in solitary confinement, often nude.

After he was released in May 2003, Shah Mohammed told of his time in solitary:

There were no windows. There were four walls and a roof made of tin, a light bulb and an air conditioner. They put the air conditioning on and it was extremely cold. They would take away the blanket in the morning and bring it back in the evening. I was kept in this room for one month.<sup>32</sup>

In May 2004, Guantánamo added 100 new isolation cells. Conditions at "Camp Five" are modeled after those in stateside "super-maximum security" prisons. Inmates are kept in total isolation and yet enjoy zero privacy, thanks to constant lighting and continuous video surveillance. By policy, prisoners are subject to these conditions for up to 30 days, though their stay can reportedly be extended for much longer periods.<sup>33</sup>

#### INCENTIVES AND ABUSES

The range of treatment, represented by the punishment cells at one end and the privilege camp at the other, establishes a carefully graded system of rewards and deprivations, by which the military seeks to win the cooperation of its prisoners.

The Center for Constitutional Rights' Michael Ratner explains what "cooperation" means in such a situation:

It means telling the interrogators everything about your life, about all your acquaintances, anything they want to know about people back home, so they can also be rounded up and arrested. And it means confessing to whatever they want you to confess to.<sup>34</sup>

In the Looking Glass-world of Guantánamo Bay, prisoners are rewarded for confessing—to crimes, terrorist attacks, political activities, religious beliefs, both factual and fanciful. It is not, finally, the value of their information (or even its veracity) that determines their treatment, any more than it is their guilt or innocence, or the nature of their alleged crimes; it is only the fact of cooperation, of submission, or conversely, the presence of resistance, the refusal to "break."

To give interrogators leverage, camp commandant Major General Miller merged the functions of the Joint Detention Group (the guards) and the Joint Interrogation Group (the interrogators).<sup>35</sup> In practice, this arrangement gave the interrogators authority

over the guards, and therefore, full control over every aspect of the prisoners' lives. As Lt. Commander Charles Swift, a military-appointed defense attorney, explains,

The interrogators were now to be in effective control of the camp, and they have the final word. You can be a model prisoner, your behavior can be impeccable, but if you're not cooperating with the interrogators, you're going to be treated like the very worst inmate—the guy who ends up in a stripped-down cell for spitting at the guard or throwing excrement. The interrogators decide whether you're the first to eat or the last, and whether your laundry gets done, and who watches you in the shower. Or they might ask for a cell search and confiscate everything. Then it'll be the interrogator who brings it all back.<sup>36</sup>

"Detainee A," an Afghan, explained the incentive program:

I was there for eighteen months and was taken for interrogation plenty of times. Questions were the same and there was offering and intimidation during the interrogations. For instance, I was promised I would be released if I told all the truth and shared all my information. Or I was threatened to be given electricity shock if I did not tell the truth.<sup>37</sup>

This is exactly the kind of treatment the Geneva Conventions are intended to prevent. The Conventions do allow for the questioning of prisoners, but prohibit granting privileges to those who cooperate, or punishing those who refuse. With this in mind, the standard military practice has been to maintain a strict division of labor between the Military Police, who guard the prison, and the Military Intelligence interrogators, who question the prisoners. By knocking down this wall, Miller removed a major safeguard against maltreatment.

The system Miller helped create proved Kafkaesque in its capricious and arbitrary workings. For example, in June 2003, three British detainees—Shafiq Rasul, Asif Iqbal, Ruhel Ahmed (collectively, the "Tipton Three")—were suddenly moved from the relative comfort of Camp Four to the isolation wing, where they were questioned for the next three months. Interrogators claimed they had video footage of the three men meeting with Osama bin Laden and Mohamed Atta, the leader of the September 11 attacks.<sup>38</sup>

Rasul recalls his response:

My heart is beating, beating, I'm saying, "it's not me, it's not me," but I'm thinking "I'm going to be screwed, I'm on an island in the middle of nowhere, there's nothing I can do." This woman had come down and she plays me the video. I say, "Are you blind? That doesn't look anything like me." But it makes no difference. I'd just got to the point where I couldn't take any more. "Do what you have to do," I told them. I'd been sitting there for three months in isolation so I says, "Yes, it's me. Go ahead and put me on trial."<sup>39</sup>

The others also confessed, but in September 2003, the British intelligence service MI-5 proved their innocence. Their alibis checked out. The three had been in the British town of Tipton on the dates in question, just as they said they had been. Rasul knows that others won't be so lucky: "In the end, we could prove our alibis ... but what about other people, especially from countries where travel records may not be available? What if they confess to something they didn't do and then can't prove it wasn't true?"<sup>40</sup>

Just as they were to be released, the three Britons were faced with two last ploys. First, the Americans asked them to sign confessions, saying it was required before they could be let go. When that failed, they were offered bribes to spy on Muslim communities in England.<sup>41</sup> And finally, as a sad postscript, even after the British government secured their release, the three men were not able to go back to Tipton. Nationalists there were making effigies in orange jumpsuits, and hanging them from the streetlights.<sup>42</sup>

The Tipton Three are now suing the US government, along with Rumsfeld, Miller, and General Richard B. Myers. The suit alleges that they were

repeatedly struck with rifle butts, punched, kicked, and slapped. They were shortshackled in painful stress positions for many hours ... causing deep flesh wounds and permanent scarring. ... Plaintiffs were also threatened with unmuzzled dogs, forced to strip naked, subjected to repeated body-cavity searches, intentionally subjected to extremes of heat and cold for the purpose of causing suffering.<sup>43</sup>

Here we can see that, at the bottom of Miller's scale ranking privileges and deprivations, is violence. The threat of pain—of torture—provides the grounding for the entire system of coercion and reward; the chief benefit of "cooperation"—of compliance, submission—is the promise that one will not be so mistreated. A prisoner's privileges are measured by his distance from intolerable suffering.

But the revocation of privilege, as the Tipton Three case shows, can come at any time. And as the prison refined its system of privileges and deprivations, it also increased its capacity for violence.

### EXTREME REACTION FORCE

Many of the bloodiest abuses at Guantánamo were perpetrated by the prison's Internal Reaction Force—nicknamed the "Extreme Reaction Force." Modeled after similar teams in domestic US prisons, the ERF is a group of guards equipped with riot gear and responsible for conducting "cell extractions" or responding to disturbances. While theoretically intended for use in emergencies, the ERF (like its stateside counterparts, paramilitary units within police departments and prisons) has increasingly been mobilized for punitive purposes.<sup>44</sup>

Tarek Dergoul told of one encounter with the ERF:

They'd already searched me and my cell twice that day, gone through my stuff, touched my Koran, felt my body, around my private parts. ... And now they wanted to do it again, just to provoke me, but I said no, because if you submit to everything, you turn into a zombie. I heard a guard talking into his radio, "ERF, ERF, ERF," and I knew what was coming. The five cowards, I called them, five guys running in with riot gear. They pepper sprayed me in the face, and I started vomiting. ... They pinned me down and attacked me, poking their fingers in my eyes, and forced my head into the toilet pan and flushed. They tied me up like a beast and then they were kneeling on me, kicking and punching. Finally, they dragged me out of the cell in chains, into the rec yard, and shaved my beard, my hair, my eyebrows.<sup>45</sup>

Dergoul's account is fairly typical of the stories prisoners have told about the Extreme Reaction Force.<sup>46</sup> But a similar story has also come from a far less typical source: in January 2003, Specialist Sean Baker was ordered to put on an orange jumpsuit and crawl under a bunk for a practice cell extraction. Only no one informed the ERF team that it was just an exercise. Baker told his hometown television station what happened next:

They grabbed my arms, my legs, twisted me up and unfortunately one of the individuals got up on my back from behind and put pressure down on me while I was face-down. Then he—the same individual—reached around and began to choke me and press my head down against



the steel floor. After several seconds, 20 to 30 seconds, it seemed like an eternity because I couldn't breathe, I began to panic and I gave the code word I was supposed to give to stop the exercise, which was "red." ... That individual slammed my head against the floor and continued to choke me. Somehow I got enough air. I muttered out: "I'm a US soldier. I'm a US soldier."<sup>47</sup>

Soon after, Baker began suffering seizures. He was evacuated to a hospital in Portsmouth, Virginia, and then moved to Walter Reed Army Medical Center. The Army's Physical Evaluation Board wrote in a September 29, 2003 report: "The T.B.I. [traumatic brain injury] was due to soldier playing role of detainee who was non-cooperative and was being extracted from detention cell in Guantánamo Bay, Cuba, during a training exercise."<sup>48</sup> He was discharged in April 2004.

Every ERF deployment is videotaped, but the tape of Baker's "extraction" is inexplicably missing. (Other tapes remain, though they have not been released to the public.) In any case, we have the military's word that such incidents are unusual. A Guantánamo spokesman reassured reporters that of 500 hours of tape, "only" 32 hours show ERF using excessive force.<sup>49</sup>

## SEX, GOD, AND DEHUMANIZATION

In addition to the Extreme Reaction Force's brutal methods, US military authorities at Guantánamo have also employed more sophisticated means of ensuring compliance—specifically, the transgression of sexual norms to humiliate prisoners and break their resolve. Military investigators uncovered the repeated use of sexual tactics to humiliate Muslim men: female interrogators wore skimpy clothing, made provocative remarks, rubbed their bodies against those of the captives, and sometimes smeared them with dye resembling menstrual blood.<sup>50</sup>

Erik Saar, a former Army translator at Guantánamo, witnessed these tactics in use and wrote of them in his memoir, *Inside the Wire*. Saar quotes one interrogator, "Brooke," explaining their use:

when [Fareek] returns to the cell in the middle of the night, ... he usually spends a great deal of time praying. ... I believe the problem here is that it's too easy for him to regain strength when he returns to his cell. ... We've gotta find a way to break that, and I'm thinking that humiliation may be the way to go. I just need to make him feel that he absolutely must cooperate with me and has no other options. I think we should make him feel so

fucking dirty that he can't go back to his cell and spend the night praying. We have to put up a barrier between him and his God.<sup>51</sup>

Toward this end, and based on the advice of a Muslim colleague, Brooke resolved to deploy cultural taboos relating to sexual desire, contact with women, and menstruation. While Saar translated, Brooke unbuttoned her blouse and asked, "What's the matter, Fareek? Don't you like women?" and "Do you like these big American tits, Fareek? ... I can see that you are starting to get hard. How do you think Allah feels about that?" The interrogator proceeded to rub her breasts against the prisoner's back, and then to paint his face with (simulated) menstrual blood. All the while, she continued with her questions, "Who told you to learn to fly, Fareek? ... Who sent you to flight school?"

In the end, Fareek did not answer Brooke's questions and all three of those present—prisoner, interrogator, and translator—were left feeling sullied.<sup>52</sup>

Other prisoners at Guantánamo have reported similar treatment, and worse—including rape. But (in part owing to the stigma attached to sexual abuse) these reports usually come secondhand, rather than from the victims or witnesses, and details are sketchy.

Yet here is a telling exception: Martin Mubanga wrote his sister a letter saying the guards were using him as a "rent boy."<sup>53</sup> The presence of forced prostitution at Guantánamo is significant for several reasons. First, it is a common feature of warfare and of prison life—both in the sense that it is prevalent in each setting and in the sense that it is a feature they share. Second, forced prostitution reflects the major characteristics of each situation, specifically, the combination of male dominance and coercive force in the absence of outside constraints. And third, though it is presumably unrelated to the process of interrogation, forced prostitution is clearly systematic; it involves, literally, an economy of violence.

Despite the obvious differences between sexually transgressive interrogations and forced prostitution, both use sex to promote similar purposes—breaking the victim's will, forcing him to submit, demonstrating the dominance of the perpetrators and, perhaps, expressing their feelings of superiority. For the victims are not only traumatized, they are *degraded*—devalued, made less, reduced. Not only in the eyes of their captors, but in their own estimation. They are not just humiliated, they are shamed.

In this sense, torture (and sexual humiliation in particular) continues a process of dehumanization that begins elsewhere

and much earlier. This dehumanization is inherent to, and given concrete expression in, the conditions of the prison camp and the practices of the torture chamber. But it is also characteristic of the ideology used to justify the existence of Camp Delta in the first place—and, for that matter, of the War on Terror that created it and continues to fill its cells.

#### BAD GUYS AND GOOD GUYS

A former marine assigned to Guantánamo Bay described the guards' attitude toward the prisoners: "We tried to fuck with them as much as we could—inflict a little bit of pain." He explained, "I thought everybody was a bad guy."<sup>54</sup>

This seems to be a common perception among those watching over our nation's captured enemies. And of course, racism is a crucial element of that worldview. An obvious and particularly crude example is provided by the merchandise at the Navy Exchange in Guantánamo: T-shirts for sale there feature pictures of rats in turbans and orange jumpsuits, with slogans like GUANTÁNAMO BAY, CUBA—HOME OF THE SAND RAT.<sup>55</sup>

Unfortunately, it seems a great many innocent people are mingled in among the "bad guys." Officially, the Defense Department estimates that 10 percent of those in custody at Guantánamo are innocent of any offense.<sup>56</sup> A group of interrogators from Pakistan concluded that most of the 58 Pakistanis held there were low-level Taliban fighters with no connection to al-Qaeda.<sup>57</sup> And a senior Pentagon official admitted that "at least two-thirds" of the 600 in custody in May 2004 should be eligible for immediate release.<sup>58</sup>

In fact, it doesn't appear that the terrorist masterminds we've been promised are actually in the camp at all. Thus far, none of its prisoners have been tried and only three have been charged with crimes.<sup>59</sup>

Lieutenant Colonel Anthony Christino, a Pentagon analyst, described the level of information coming out of the camp:

interrogators at Guantánamo obtained information of only minimal to moderate intelligence value. Certainly they gained useful knowledge about recruitment and training, and perhaps some limited insight concerning financing and logistics, but not much about operations. ... I doubt that anyone detained at Guantánamo ever had access to that type of information; if some claim that they did, they probably did so to

either earn incentives or avoid the maltreatment that General Miller instituted.<sup>60</sup>

In short, not only is the US running an extra-legal, offshore concentration camp where it beats, starves, rapes, and otherwise tortures people it has kidnapped from around the world—but a great many of the people being so mistreated have no connection to terrorism. Some substantial portion of the prisoners—perhaps “only” one-tenth, perhaps more than two-thirds—have done nothing at all to offend the US government or to harm its citizens. They are not guilty of any crime and do not have any information to provide—not if they’re asked politely, not if they spend days at a time chained to the floor. Moreover, the interrogators seem to understand this: as time passes and the pressure builds, fewer prisoners are even being questioned, though they still have almost no hope of being released, either.<sup>61</sup>

Faced with this scenario, Lieutenant Commander Charles Swift reached a rather unhappy conclusion: “We were supposed to be the good guys. But at Gitmo, we aren’t.”<sup>62</sup>

#### GENEVA CONVENTIONS AND TORTURE MEMOS

The staff at Guantánamo Bay greet each other with a call-and-response slogan: “Honor bound,” one says. “To defend freedom,” his comrade replies.<sup>63</sup>

This is an odd motto for prison guards, in any circumstance. But it is especially ironic at Guantánamo, where the guards are not only depriving people of their liberty but are also engaged in a daring legal experiment to greatly curtail the idea of “rights” and to radically expand state power.

Almost immediately after September 11, 2001, the Bush administration started looking for ways around the fact that, at every level of the law, torture is just flat-out prohibited. The quest for legal rationales allowing torture is the more-or-less explicit aim of a series of legal opinions, policy briefs, and assorted memoranda on the topic circulating in the administration at the beginning of 2002.

The first move in their strategy was to unilaterally suspend the Geneva Conventions. In a stirring display of legal incoherence, on February 7, 2002, President Bush began by declaring, “I have the authority under the Constitution to suspend Geneva ... but I decline to exercise that authority.” He then announced his decision that the US would apply the “principles of Geneva” to the Taliban prisoners, but would not consider them POWs, thus creating out of whole cloth

the "unlawful combatant" designation that would rationalize this decision. Bush also claimed that "none of the provisions of Geneva apply to our conflict with al-Qaeda in Afghanistan or elsewhere throughout the world" but that the prisoners would be treated "humanely."<sup>64</sup> (Close reading reveals that the "humane" standards only bind the military, not the CIA or other intelligence agencies.)<sup>65</sup>

Of course Bush had the best legal advice to inform his decision. A Justice Department memo, dated January 22, 2002, concluded that "customary international law does not bind the President of the US Armed Forces in their decisions concerning the detention conditions of al Qaeda and Taliban prisoners."<sup>66</sup>

On January 25, 2002, then-White House counsel (and current attorney general) Alberto R. Gonzales added his opinion, writing in a memo to President Bush:

The war against terrorism is a new kind of war. It is not the traditional clash between nations adhering to the laws of war that formed the backdrop for GPW [the Third Geneva Convention on the Treatment of Prisoners of War]. The nature of the new war places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians, and the need to try terrorists for war crimes such as wantonly killing civilians. In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners.<sup>67</sup>

The suggestion that in 1949 the authors of the Geneva Conventions were unable to envision a war characterized by atrocities, civilian casualties, irregular forces, and the need for prompt intelligence is patently absurd and very nearly offensive. It was, instead, the horrors of the Second World War that shaped the Conventions in the first place. Gonzales applies bad history in a transparent attempt to rationalize abandoning the principles intended to constrain states in times of conflict. The implication of his memo is that the US should adhere to such principles until they become inconvenient. In other words, he seeks to abandon Geneva's constraints in precisely the circumstances in which they become relevant. Whatever else one thinks of the "War on Terror," the fact that our government is actively undermining an area of law designed to prevent Nazi-style atrocities ought to give us pause.

Gonzales's contention is that the president can simply declare inoperative laws that restrict the means of waging war. His argument



not only urges that the Geneva Conventions be unilaterally shelved, but also thereby seeks to effectively nullify the 1996 War Crimes Act, which sought to render Geneva enforceable under federal law.<sup>68</sup>

Then—assistant attorney general Jay S. Bybee (now a federal appeals court judge) also argued along these lines. He sent Gonzales a 50-page memo outlining several strategies for circumventing federal prohibitions on the use of torture.

First, Bybee presents an extremely narrow definition of torture:

Torture is not the mere infliction of pain or suffering on another, but is instead a step well removed. The victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in the loss of significant body function will likely result.<sup>69</sup>

Then, he posits a “good faith” exception to the law and suggests defenses based on claims of necessity and self-defense (specifically, “the nation’s right to self-defense”).<sup>70</sup> Bybee thus directly violates the principle (urged by the United Nations, among other bodies) that human rights law should be interpreted in such a way as maximize its protections. He also just ignores the explicit demands of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which clearly states that “no exceptional circumstances whatsoever ... may be invoked as a justification of torture.”

Still, the most ambitious claim in the memo concerns the power of the president:

Congress can no more interfere with the President’s conduct of the interrogation of enemy combatants than it can dictate strategic or tactical decisions on the battlefield. Just as statutes that order the President to conduct warfare in a certain manner or for specific goals would be unconstitutional, so too are laws that seek to prevent the President from gaining the intelligence he believes necessary to prevent attacks upon the United States.<sup>71</sup>

Read literally, this interpretation of the Constitution would forbid Congress from any restriction on the use of military force, either in terms of ends sought or means employed. It would also give the president unlimited authority to collect intelligence. In this case, the argument justifies torture (though it avoids calling it that), but it could also be used to justify warrantless wiretaps,<sup>72</sup> Watergate-style black-bag jobs, or setting up a nationwide system of military

checkpoints. By this reasoning, it is hard to see what limits—that is, what rights—would remain.

#### RATCHETING UP THE PRESSURE

Secretary of Defense Donald Rumsfeld personally took a hand in defining the "new paradigm" and applying the post-Geneva standards to the specific challenges facing interrogators at Guantánamo.

On October 11, 2002, interrogators in Guantánamo requested approval to use hooding, stress positions, sensory deprivation, and dogs in the course of questioning suspected 9/11-conspirator Mohammed al-Kahtani. They produced a memo concerning "counterresistance strategies," including the "use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family." The memo specifically described interrogation sessions of twenty hours, light and sound assaults, stress positions, "exposure to cold weather," and the "use of a wet towel and dripping water to induce the misperception of suffocation" (a practice known as "waterboarding").<sup>73</sup> Much of al-Kahtani's treatment directly foreshadowed the abuses at Abu Ghraib: a military investigation later confirmed that he had been forced to wear a leash and "perform a series of dog tricks." He had also been subjected to "gender coercion." Female soldiers deliberately invaded al-Kahtani's [sic] space. And interrogators forced him to wear women's underwear and threatened to spread rumors that he was gay.<sup>74</sup>

Lieutenant Colonel Diane E. Beaver, the legal counsel at Guantánamo, determined these tactics were legal so long as "there is a compelling government interest, and it is not done intentionally to cause prolonged harm."<sup>75</sup>

Major General Michael Dunlavey, then the commander at Guantánamo, agreed and sent the list of tactics to General James T. Hill, the head of US Southern Command. Hill worried about the legality and referred the matter to General Richard Myers, the chair of the Joint Chiefs of Staff.<sup>76</sup>

Two months later Rumsfeld approved the use of these techniques, not only for the particular case but "as a matter of policy." After six weeks, he rescinded that approval on the advice of the Department of Defense General Counsel. In January he declared that all extraordinary interrogation practices would require his personal approval, on a case-by-case basis, and established a Working Group to help refine existing policy.<sup>77</sup>

When the Working Group issued its report, it listed 35 techniques, 26 of which were to be "approved for use with unlawful combatants outside the United States." The first 19 were standard techniques from Field Manual 34-52 (though one was from a discontinued version of the handbook). The rest went further:

- 20) Hooding.
- 21) Mild Physical Contact: Lightly touching a detainee or lightly poking the detainee in a completely non-injurious manner.
- 22) Dietary Manipulation [but] no intended deprivation.
- 23) "Environmental Manipulation ... e.g., adjusting temperature or introducing an unpleasant smell.
- 24) Sleep Adjustment: Adjusting the sleeping times of the detainee (e.g., reversing sleep cycles from night to day). This technique is NOT sleep deprivation.
- 25) False Flag: Convincing the detainee that individuals from a country other than the United States are interrogating him.
- 26) Threaten to Transfer: Threatening to transfer the subject to a third country that subject is likely to fear would subject him to torture or death.

The remainder, according to the recommendations, were to be "approved for use with unlawful combatants outside the United States" but only at "strategic interrogation facilities" (such as Guantánamo), only for "critical intelligence" purposes, and only by specially trained personnel acting under medical supervision and with prior approval. These high-level techniques included:

- 27) Isolation. [no duration specified]
- 28) Prolonged Interrogation [for as long as] 20 hours per day per interrogation.
- 29) Forced Grooming: Forcing a detainee to shave hair or beard.
- 30) Prolonged Standing. ... Not to exceed four hours in a 24-hour period.
- 31) Sleep Deprivation. ... Not to exceed 4 days in succession.
- 32) Physical Training ... e.g., running, jumping jacks.
- 33) Face Slap/Stomach Slap.... These techniques are used strictly as shock measures and do not cause pain or injury. ... Limited to two slaps per application; no more than two applications per interrogation."
- 34) "Removal of Clothing. ... Creating a feeling of helplessness and dependence."

35) "Increasing Anxiety by Use of Aversions ... e.g., simple presence of dog without directly threatening action."<sup>78</sup>

On April 16, 2003, Rumsfeld approved 24 of the techniques, including the use of isolation, environmental manipulation, and sleep adjustment. He also reserved for himself the right to approve "additional interrogation techniques" should the need arise.<sup>79</sup>

One official who worked on the Defense Department policy explained the impetus for the revisions: "We'd been at this for a year-plus and got nothing out of them. ... [We] need a less-cramped view of what torture is and is not." In other words, people at the highest levels of government deliberately rewrote the definition of torture and reconceived the restraints that it would imply for the sole purpose of allowing harsher methods. Despite reassurances that the principles of Geneva would be applied, even if the strictest provisions of the law were not, as soon as these principles became inconvenient to the government's aims they were abandoned. Thus, facing intense demands for results, interrogators were driven to "ratchet up the pressure."<sup>80</sup>

## GITMO TO GO

Despite the limits spelled out in the official policy, the "exceptional" practices quickly became routinized—not only in Guantánamo but elsewhere. For example, the transfer of practices from Guantánamo Bay to Abu Ghraib was not an accident, but a deliberate shift in management strategy, the implementation of which was assigned to one man—Major General Geoffrey D. Miller.

Miller took charge of Guantánamo Bay in November 2002, replacing Dunlavey and Brigadier General Rick Baccus. Baccus was relieved of all duties on October 9, 2002, five days after Defense Department sources were quoted in the media, complaining he was "too nice."<sup>81</sup> Apparently Baccus had raised the ire of interrogators by distributing copies of the Qur'an and adjusting meal schedules in keeping with the fast of Ramadan. He also posted notices from the Red Cross informing prisoners of their rights and ordered guards not to scream at the detainees.<sup>82</sup> He recalls, "I was mislabeled as someone who coddled detainees. In fact, what we were doing was our mission, professionally."<sup>83</sup> Baccus reports that in the seven months of his command, there were ten cases of abuse.<sup>84</sup>

When he took over the camp, Miller had no prison experience at all.<sup>85</sup> Yet he took to the work with enthusiasm and immediately began experimenting. Miller instituted a "72-point matrix for stress

& duress,” including the use of hoods, forced nudity, dogs, shackling in painful positions, and extreme temperatures.<sup>86</sup>

In an open letter describing their experiences, the Tipton Three explained how things changed when Miller took over:

A point came at which you could notice things changing. That appeared to be after General Miller [arrived], around the end of 2002. That is when short-shackling started, loud music playing in interrogation, shaving beards and hair, putting people in cells naked, taking away people’s “comfort” items, the introduction of levels, moving people every two hours [to deprive] them of sleep, the use of A/C air. Isolation was always there. “Intel” blocks came in with General Miller. Before when people were put in isolation they would seem to stay for not more than a month. After he came, people would be kept there for months and months and months. We didn’t hear anybody talking about being sexually humiliated or subjected to sexual provocation before General Miller came. After that we did.<sup>87</sup>

Miller explained his vision for Guantánamo: “I think of Guantánamo as the interrogation battle lab in the war against terror.”<sup>88</sup> Thus, it seems fair to say that the general was not only trying to run his station; he was self-consciously experimenting, hoping to develop a model for use elsewhere.

Nor were his efforts unnoticed or unappreciated. In August 2003, the Pentagon gave Miller the opportunity to apply his innovative style in a different setting, directing him to take a team to Iraq and review prison operations there. Drawing from his experiences at Guantánamo, Miller argued that the main job of army prisons should be interrogations, and reasoned therefore that the main job of the MPs ought to be to support the interrogators. He specifically recommended that the MP force “be actively engaged in setting the conditions for the successful interrogation and exploitation of the internees.”<sup>89</sup> Again, this undermined a major safeguard against abuse—the separation of guard duties from interrogation practices.

Miller’s visit had profound effects on conditions at Abu Ghraib.

On September 14, 2003, Lieutenant General Ricardo S. Sanchez, the commander of US forces in Iraq, sent a secret cable to US Central Command, listing 12 interrogation techniques he intended to approve immediately. Among these were the use of stress positions, sensory deprivation, yelling, loud music, light control, sleep man-



agement, and "[e]xploit [the] Arab fear of dogs."<sup>90</sup> Sanchez's decision was informed not only by Miller's recommendations but also by Rumsfeld's December 2002 memo authorizing the use of dogs at Guantánamo, and Bush's February 2002 memo denying detainees from Afghanistan the protections of the Geneva Conventions. A month later, Sanchez's policy was scrapped by Central Command, who feared it went too far.<sup>91</sup>

So on October 12, 2003, Sanchez revised his policy. The new policy specified certain techniques that required his personal approval, including changes of scenery, dietary manipulation, environmental manipulation, sleep adjustment, isolation (for 30 days and more), the use of dogs, sleep deprivation (for 72 hours), sensory deprivation (72 hours), and stress positions (45 minutes at a time, for 4 hours total). The policy quoted from the Pentagon's Working Group report:

Interrogation approaches are designed to manipulate an internee's emotions and weaknesses. ... It is important that interrogators be provided reasonable latitude to vary approaches depending on the security internee's cultural background.<sup>92</sup>

Sanchez's order specifically called on interrogators to assume control over "lighting, heating, ... food, clothing, and shelter."<sup>93</sup> These elements of confinement—in essence, the basic conditions of the prisoners' lives—have traditionally been divorced from interrogation practices. In fact, the Geneva Conventions insist that such factors not be altered (either improved or degraded) to aid interrogations. Sanchez, apparently forgetting that the Genevas were supposed to apply in Iraq, followed Miller's lead and removed this essential safeguard.

A month later, on November 19, 2003, Sanchez went further, placing the 205<sup>th</sup> Military Intelligence Brigade in tactical control of the prison.<sup>94</sup> At least three teams of interrogators were transferred from Guantánamo to Abu Ghraib, and MPs were instructed to "set physical and mental conditions for favorable interrogation of witnesses."<sup>95</sup>

Miller bragged,

We're enormously proud of what we have done at Guantánamo to be able to get that kind of environment where we were focused on getting the maximum amount of intelligence ... We were bringing expertise into the [Iraqi] theater. We made a number of recommendations,

the vast majority of which were implemented following the visit.<sup>96</sup>

Miller's visit broadened the tactics available to interrogators, re-structured the guard/interrogator relationship, and recast the stated purpose of the prison. The results were immediately perceptible. The Red Cross visited Abu Ghraib in October 2003, and was alarmed to see

persons deprived of their liberty completely naked in totally empty concrete cells and in total darkness, allegedly for several consecutive days. ... The military intelligence officer in charge of the interrogation explained that this practice was "part of the process." The process appeared to be a give-and-take policy whereby persons deprived of their liberty were "drip-fed" with new items (clothing, bedding, hygiene articles, lit cell, etc.) in exchange for their "cooperation."<sup>97</sup>

This was a direct adaptation of Miller's "incentive" strategy from Guantánamo. Brigadier General Janis Karpinski said of Miller's visit:

He said at Guantánamo Bay we've learned that the prisoners have to earn every single thing they have. ... He said they are like dogs, and if you allow them to believe at any point that they're more than a dog, then you've lost control of them.<sup>98</sup>

This history would seem to trace a clear course of "migration." Practices, strategies, and organizational structures evolved at Guantánamo Bay—often with direct approval from Washington—were deliberately transported to Iraq. Given the grotesque consequences at Abu Ghraib, one might come to question the Guantánamo approach. But the Defense Department does not seem to have made this elementary logical step. In March 2004, the Pentagon returned Miller to Iraq to replace the leadership of the troubled prison system.<sup>99</sup>

#### **AFGHANISTAN: "AN ENVIRONMENT OF GENERATED FEAR"**

Whatever Miller's contribution to the military's interrogation practices, Guantánamo was not the only source for the methods we've seen in Iraq. Many of the Abu Ghraib standards, as well as the commanders and the soldiers, came to Iraq from Afghanistan, where Spartan conditions, physical punishments, and psychological abuse seem to have been the norm.

One prisoner from the Afghan conflict (later relocated to Guantánamo Bay), Moazzam Begg, wrote in a letter,

During several interviews, particularly—though exclusively—in Afghanistan, I was subjected to pernicious threats of torture, actual vindictive torture, and death threats—amongst other coercively employed interrogation techniques. ... [These] interviews were conducted in an environment of generated fear, resonant with terrifying screams of fellow detainees facing similar methods. In this atmosphere of severe antipathy towards detainees was the compounded use of racially and religiously prejudiced taunts. This culminated, in my opinion, with the deaths of two fellow detainees at the hands of US military personnel, to which I was partially witness.<sup>100</sup>

This "atmosphere of severe antipathy" and "generated fear" seems to have been purposefully constructed by the authorities. The interrogation room at Bagram featured a poster of the World Trade Center's Twin Towers.<sup>101</sup> And, at one point, three Israeli flags were painted on the wall of the holding area, within view of the cages.<sup>102</sup> Under the circumstances, this iconography would be expected to intimidate Muslim prisoners, and the use of the Israeli flag can only be seen as a deliberate provocation.

Likewise, consider the process by which new prisoners were admitted to Kandahar, and imagine, if you will, what you would feel in their place: You arrive at night, perhaps wounded, perhaps soaked with your own piss. A burlap sack covers your head, trapping your breath against your face. Chained to other men, both in front and behind you, you are led off the plane, down a ramp, amid a swarm of screaming Military Police. They shout orders that you cannot understand and shine bright lights at your hooded face. Disoriented, you stumble several yards to the "reception area," where you stand nervously, waiting, listening to unexplained screams. Eventually you are separated from the other prisoners and thrown into an alcove lined with sandbags, where soldiers in rubber gloves use scissors to cut away your clothing. Standing naked and in chains, you are asked some questions, first by a soldier and then by a doctor. The doctor runs his hand along your skin, looks in your mouth, and shines a light in your eyes. Then the MP shouts, "Wa' all'an lill act el emptihan!" (*And now for the ass inspection!*) He grabs you by the neck and forces you to bend, while the doctor probes your anus. A moment later you are thrown onto a dusty mattress, face down. Your shackles are removed, and you are covered with a lice powder. Still naked, you are photographed and fingerprinted. The guards stuff you into

prison clothes and write a number on your shirt. The bag goes back over your head, and they march you out of the tent.<sup>103</sup>

This process functions as a kind of assembly line to produce docile captives. It operates simultaneously at several levels—the medical, the bureaucratic, and the symbolic. Doctors examine; forms are filled out; the markings of outside life (such as clothing) are removed and replaced with symbols of institutionalization (a prison uniform and a number). And all of this attention presumably aids, in some way, the larger war effort; the production of passive prisoners serves as one step in the pacification of the entire country.

But for the person undergoing this treatment, it must present itself not as multiple, overlain processes performing several functions simultaneously, but as a disorienting series of terrors and humiliations. One Afghan man told Amnesty International: “I’m 50 years old, and no one has ever taken my clothes. It was a very hard moment for me.”<sup>104</sup>

#### OPPORTUNITIES FOR ABUSE

A military evaluation of the US detention facilities in Afghanistan uncovered the same sorts of problems that typified conditions at Abu Ghraib. The study, conducted in the summer of 2004 by Brigadier General Charles H. Jacoby, Jr., found that the minimal training and weak guidance offered to personnel created the “opportunity” for abuse. Jacoby’s report said that he did not find any actual abuse in the two dozen facilities he visited, which is not surprising since he didn’t speak to any prisoners or measure prison conditions by the standards of the Geneva Conventions. But the general did worry over the lack of access for the Red Cross, the indefinite duration of detention, and unwarranted use of rectal exams.<sup>105</sup>

Had Jacoby spoken with the prisoners, he may have been even more troubled. Prisoners in Afghanistan told Human Rights Watch of sleep deprivation, exposure to freezing temperatures, severe beatings, and being photographed “in shameful and obscene positions.” Detainees at Bagram, Kandahar, Jalalabad, and Asadabad also say they were shackled for weeks, forced to stand or kneel for long periods, kicked or beaten to keep them awake, and sprayed with freezing water.<sup>106</sup> Declassified army documents indicate that sexual humiliation, rape, and the taking of “trophy photographs” were common, especially at Kandahar.<sup>107</sup>

Worse, there have been several suspicious in-custody deaths. One of the first victims was a slight, 22-year-old taxi driver known only as Dilawar. Dilawar was apprehended by an Afghan militia

when his taxi was stopped at a checkpoint. He arrived at Bagram on December 5, 2002, and died on December 10. Military doctors ruled the death a homicide, specifically caused by "blunt force injuries to lower extremities complicating coronary artery disease."<sup>108</sup> The coroner, Lieutenant Colonel Elizabeth Rouse later testified that Dilawar's legs "had basically been pulpified. ... I've seen similar injuries in an individual run over by a bus."<sup>109</sup> A report by the army's Criminal Investigations Command added that "sleep deprivation at the direction of military intelligence soldiers" was also likely a "direct contributing factor."<sup>110</sup>

Two Afghan translators, Ahmad Ahmadzai and Baryalai, provided the details of Dilawar's interrogations. On December 8, Dilawar was questioned by Specialist Glendale C. Walls and Sergeant Selena M. Salcedo, who placed him in stress positions during questioning. Ahmadzai recalls,

Selena berated him for being weak and questioned him about being a man, which was very insulting because of his heritage. ... Selena stepped on his bare foot with her boot and grabbed him by his beard and pulled him towards her. ... [She later] kicked Dilawar in the groin, private areas, with her right foot. She was standing some distance from him and she stepped back and kicked him. About the first 10 minutes, I think, they were actually questioning him. After that it was pushing, shoving, kicking and shouting. ... There was no interrogation going on.

That night Salcedo ordered the MPs to keep Dilawar chained by his wrists to the ceiling of his cell. By morning he was pleading for medical attention—pleas that went unheeded.<sup>111</sup>

On December 10, Dilawar was brought in for more "questioning." This time Walls was aided by Specialist Josh R. Claus. The translator, Baryalai, remembers Dilawar babbling incoherently and complaining of beatings by the guards. The prisoner was so exhausted that he kept falling asleep, even when placed in stress positions. Baryalai says, "It looked to me like Dilawar was trying to cooperate, but he couldn't physically perform the tasks." Walls became exasperated. He grabbed the prisoner and "shook him harshly," threatening to send him to a prison in the US where he would be "treated like a woman by the other men."<sup>112</sup>

The army report summed up the soldiers' treatment of Dilawar like this: "kicks to the groin and leg, shoving or slamming him into walls/table, forcing the detainee to maintain painful, contorted body positions during interview and forcing water into his mouth



until he could not breathe.” The report concluded that Dilawar had finally been beaten so badly that “even if he had survived, both legs would have had to be amputated.”<sup>113</sup>

Specialist Corey E. Jones explains that the beatings started when Dilawar spit at the soldiers, and a guard kned him in response:

He screamed out, ‘Allah! Allah!’ ... Everybody heard him cry out and thought it was funny. ... It became a kind of running joke, and people kept showing up to give this detainee a common peroneal strike just to hear him scream out ‘Allah.’ ... It went on over a 24-hour period, and I would think that it was over 100 strikes.”<sup>114</sup> Private Willie V. Brand, a guard with the 377th Military Police Company and a security guard in civilian life, admitted that he had hit Dilawar “somewhere in the area of 37 times.”<sup>115</sup>

Knee-strikes to the prisoner’s leg, targeting the common peroneal nerve, seem to have been a routine tactic at Bagram. Guards with the 377th MP Company say that they were instructed to use the painful, debilitating blows as a means of controlling the prisoners, and were trained in such “pressure-point control tactics” by members of their unit who worked as cops and prison guards in the United States.<sup>116</sup>

Ultimately, the army’s Criminal Investigations Command recommended charges against 28 soldiers, implicating them in the deaths of two detainees. (One was Dilawar; the other was Mullah Habibullah, who died on December 4, 2002 after similar treatment.)<sup>117</sup> As of September 2005, twelve GIs had actually been charged, including the commander of the 377th, Captain Christopher M. Beiring.<sup>118</sup>

Most of those faulted by the Army investigators were assigned to either the 377th Military Police Company or the 519th Military Intelligence Battalion, though Special Operations troops were also implicated. Some of the troops from the 519th were later moved to Abu Ghraib, where they were made responsible for establishing interrogation procedures.<sup>119</sup> Among those transferred was Specialist Damien Corsetti—nicknamed “Monster” by his colleagues and “the King of Torture” by his superiors.<sup>120</sup> While stationed at Bagram, Army investigators say Corsetti “placed his penis along the face” of one prisoner, “simulated anally sodomizing” another, and threatened at least one with rape.<sup>121</sup> Later, at Abu Ghraib, Corsetti was one

of three soldiers disciplined after forcing an Iraqi woman to strip during questioning.<sup>122</sup>

Just as the 377<sup>th</sup> took pain-compliance techniques from US prisons and applied them in Bagram, the 519<sup>th</sup> seems to have transferred specific interrogation methods from Afghanistan to Iraq.<sup>123</sup> But more important, the troops carried with them a logic of domination, and they found in each location that the organizational and ideological conditions provided opportunities for abuse.

#### THE SLIPPERY SLOPE AND THE TRANSFER TO IRAQ

Former army interrogator Chris Mackey's memoir of Afghanistan offers a clear view of the slippery slope to abuse, a treacherous decline from rigorous training in the standards of the Geneva Conventions and the "unshakable conviction that we should follow rules to the letter" to the slow realization that the by-the-book approach was "ineffective" in the face of the prisoners' "simple refusal to cooperate."<sup>124</sup> Mackey quickly found himself cutting corners, making compromises with his conscience, producing rationalizations. At first, sleep deprivation was strictly out of bounds. Then, it was decided that an interrogation could continue for as long as the interrogator could hold up, but that interrogators could not tag-team a single subject.<sup>125</sup> Eventually Mackey himself decided that tag-teaming might be all right since he had had "just two or three hours more sleep than the prisoner."<sup>126</sup>

Later, after learning of the abuses at Abu Ghraib, he reflected on this experience. He wrote:

We had agonized over how far we could go, constructing elaborate rules and rationales and coming up with the most menacing name we could think of—monsterring—for a sleep deprivation technique that looks meek by comparison to the methods interrogators were authorized to use in Iraq.

The rules of engagement at Abu Ghraib may have had nothing to do with the sadistic behavior that took place on the high-security cell block known as Tier 1A. But both represented the gravitational laws that govern human behavior when one group of people is given complete control over another in a prison. Every impulse tugs downward. We had seen it in our unit in Afghanistan. The prohibition on the use of stress positions early in the war gave way to policies allowing their use to punish prisoners for disrespectful behavior. The rules were relaxed further by those who followed us at Bagram,

and within a year stress positions were a formally authorized interrogation technique by the command in Iraq. Rules regarding sleep deprivation, isolation, meal manipulation, and sensory deprivation followed similar trajectories.<sup>127</sup>

Eric LaHammer, an interrogator with the 519<sup>th</sup> Battalion, confirmed Mackey's supposition. LaHammer told the *New York Times* that when he arrived at Bagram in July 2002, sleep deprivation was limited to 24 hours and the interrogators were required to stay awake for as long as their subjects. The 519<sup>th</sup> changed both rules, allowing interrogators to sleep while the prisoners were kept awake and increasing the standard period to 36 hours.<sup>128</sup>

Again, we can trace the movement of abusive practices, along with the doctrines authorizing them and the personnel employing them, from one theater of operations to the other. The Schlesinger Commission explains:

On January 24, 2003, in response to a data call from the Joint Staff to facilitate the Working Group efforts, the Commander Joint Task Force-180 forwarded a list of techniques being used in Afghanistan, including some not explicitly set out in FM 34-52. These techniques were included in a Special Operations Forces (SOF) Standard Operating Procedures document published in February 2003. The 519<sup>th</sup> Military Intelligence Battalion, a company of which was later sent to Iraq, assisted in interrogations in support of SOF and was fully aware of their interrogation techniques.

Interrogators and lists of techniques circulated from Guantánamo and Afghanistan to Iraq. During July and August 2003, the 519<sup>th</sup> Military Intelligence Company was sent to the Abu Ghraib detention facility [from Afghanistan] to conduct interrogation operations. Absent any explicit policy or guidance, other than FM 34-52, the officer in charge prepared draft interrogation guidelines that were a near copy of the Standard Operating Procedure created by the SOF.<sup>129</sup>

On October 16, 2003, Captain Carolyn A. Wood of the 519<sup>th</sup> MI Battalion posted "Interrogation Rules of Engagement" on the wall of the Joint Interrogation and Debriefing Center in Abu Ghraib.<sup>130</sup> These were the rules authorizing coercive techniques like the use of utterly bare "strip cells," changes of diet, sleep or sensory deprivation lasting as long as 72 hours, isolation for 30 days, and the use of stress positions for 45 minutes at a time.<sup>131</sup> According to Colonel

Marc Warren, the new document did not do much to change interrogation practices or to affect overall conditions in the prison; it merely codified what the 519<sup>th</sup> was already doing anyway, based on "their own policies that had been used in other theaters."<sup>132</sup>

#### OTHER OFFICIAL REPORTS

As the occupation of Iraq drags on, reports of war crimes, including torture and outright murder, have been surfacing at an astonishing rate. Army officials acknowledge that there have been more than 400 allegations of prisoner abuse since the beginning of the Afghan war, and more than 230 soldiers and officers have faced court-martial or administrative discipline relating to such abuse. For instance, in November 2005, five soldiers with the 75<sup>th</sup> Ranger Regiment were indicted for beating Iraqi prisoners.<sup>133</sup> All five plead guilty to dereliction of duty, four to assault and battery, and two to maltreatment. They received sentences ranging from 30 days to six months, plus reductions in rank, and (in two cases) dishonorable discharges.<sup>134</sup>

Similarly, within the First Marine Division, Defense Department documents record 10 substantiated incidents involving 24 marines, 11 of whom were court-martialed. In one incident, occurring in April 2003, three marines shocked a prisoner with an electrical transformer. In May, marines in Karbala took turns holding a pistol to the head of a bound prisoner, posing for photos. In July, 4 marines ordered teenagers to kneel beside holes dug in the ground and fired a pistol "to conduct a mock execution." In August, a marine at Camp Dogwood, near Iskandariyah, used an alcohol-based cleaning fluid to light a prisoner's hands on fire. This marine was subsequently court-martialed for assault, convicted, demoted, and jailed for 90 days.<sup>135</sup>

Elsewhere in Iraq, a unit with no training was ordered to process and interrogate prisoners. One soldier told investigators that he had forced two prisoners to their knees, put bullets in their mouths, and told them they would be shot if they didn't answer his questions. He then took the bullets and proceeded to interrogate them while another soldier pretended to load the bullets into his rifle. Though the investigators identified this as a "law of war violation," the soldier in question was only punished administratively.<sup>136</sup>

Worse still, as of May 2004, the Army Criminal Investigations Division was conducting 33 investigations concerning deaths in custody. The Defense Department released the death certificates for twenty-three of the cases. Three of these were from Afghanistan,

twenty from Iraq. Thirty of the deaths had occurred inside detention facilities, and eight were “classified by medical authorities as homicides, which involved suspected assaults of detainees either before or during interrogation sessions that may have led to the detainee’s death.”<sup>137</sup> Within a year, the count of officially acknowledged homicides had increased substantially—numbering 28 between January 2002 and March 2005 (13 at detention camps and 15 at the point of capture). The army was prosecuting 36 soldiers and actively investigating 21 others.<sup>138</sup>

Still, obvious abuses continue to go unpunished. Magem Sadun Hatab, a 52-year-old prisoner at Camp Whitehorse in Iraq, died on June 6, 2003. Military investigators determined that he had been hit and kicked in the chest by US soldiers on June 4. On June 5, Hatab was lethargic, experienced difficulty breathing, and had diarrhea. Guards reported that he was covered in shit, and the commander ordered him stripped and removed from his cell. According to a military report, he was then left “naked outside in the sun and heat for the rest of the day and into the night. Shortly after midnight, Mr. Hatab was found dead.” The autopsy revealed that he had six broken or cracked ribs and a broken hyoid (a bone located at the base of the tongue). The official cause of death is “strangulation.” No one has been charged in the case.<sup>139</sup>

An Iraqi army officer, Lieutenant Colonel Karim ‘Abd al-Jalil, died on January 9, 2004, after four days of Special Forces interrogations at Forward Operating Base Rifles, near al-Asadl. Photos showed bruises on his abdomen and cuts on his arms and legs, but the death certificate listed his cause of death as “natural causes.” Later this was changed to “blunt force injuries and asphyxia.” Pentagon documents say that, when he was first taken into custody, he was held in isolation, with his hands chained to a pipe running along the ceiling of his cell.<sup>140</sup> Another detainee told reporters that soldiers “would kick [al-Jalil] a lot. ... They tossed him on his back and stepped on him. They danced on his belly and poured cold water all over him.”

Army memos helpfully suggest that al-Jalil committed suicide.<sup>141</sup>

## TASK FORCE 6-26

In June 2004, the director of the Defense Intelligence Agency, Vice Admiral Lowell E. Jacoby, contacted under secretary of defense for intelligence Stephen A. Cambone concerning reports of abuse by an elite CIA-military task force searching for former Ba’athist officials.



In his classified report, Jacoby summarizes the concerns of numerous DIA employees, who complain that members of Task Force 6-26 had beaten detainees, confiscated evidence of abuse, and threatened anyone who raised objections.<sup>142</sup>

The Jacoby report was not the first indication that the secret unit was operating out of bounds. Task Force 6-26 (formerly Task Force 121) had previously received ten reprimands for abuse and has two court-martials pending. Four members were reassigned after they tortured prisoners with Taser-brand stun guns (the same device used by police in the United States). The June 2004 DIA report noted that agents had seen the unit's prisoners arrive in a Baghdad prison with bruises, kidney pain, and "burn marks on their backs."<sup>143</sup>

Likewise, a confidential army report dated December 2003 warned General Sanchez and the US Central Command that Task Force 121 "needs to be reined in with respect to its treatment of detainees." In the report, Colonel Stuart A. Harrington specifically expressed concern that arrest and detention practices in Iraq could be "technically" illegal. He also noted that innocent people were being arrested in wide sweeps, then held for months. Furthermore, "detainees captured by TF 121 have shown injuries that caused examining medical personnel to note that detainees show signs of having been beaten."<sup>144</sup>

The work of Task Force 6-26 bears a marked resemblance to another Special Forces program. Investigative journalist Seymour Hersh reports that, in late 2001 or early 2002, President Bush approved a top-secret "Special Access Program" that authorized the Defense Department to establish a clandestine team of Special Forces to capture or kill top al-Qaeda operatives anywhere in the world.<sup>145</sup> Hersh writes:

In theory, the operation enabled the Bush Administration to respond immediately to time-sensitive intelligence: commandos crossed borders without visas and could interrogate terrorism suspects deemed too important for transfer to the military's facilities at Guantánamo. They carried out instant interrogations, often with the help of foreign intelligence services—using force if necessary—at secret C.I.A. detention centers scattered around the world.<sup>146</sup>

At the end of 2004, there were thirty-seven Special Forces interrogators facing charges,<sup>147</sup> including at least six SEALs from 6-26. The charges include assault with a dangerous weapon, aggravated

assault with intent to cause death or grievous bodily harm, and maltreatment of a detainee. One of the victims later died in CIA custody at Abu Ghraib and appeared in the notorious photographs, a body packed in ice.<sup>148</sup>

#### THE CHAIN OF COMMAND AND THE DIVISION OF POWERS

The influence of these elite units extends even further, far beyond their own adventures and atrocities. Captain Ian Fishback of the 82<sup>nd</sup> Airborne told Human Rights Watch, "In Afghanistan we were attached to Special Forces and saw OGA. We never interacted with them, but they would stress guys. We learned how to do it. We saw it when we would guard an interrogation."<sup>149</sup>

The "Murderous Maniacs" of the 82<sup>nd</sup> seem to have learned their lessons well. Unnamed soldiers attached to the unit told HRW that they regularly denied prisoners food and water, forced them to perform strenuous exercises to the point of physical exhaustion, exposed them to extreme temperatures, deprived them of sleep, and beat them—sometimes with baseball bats. One soldier said,

It was like a game. You know, how far could you make this guy go before he passes out or just collapses on you. From stress positions to keeping them up fucking two days straight, whatever. Deprive them of food water, whatever. ... We would give them blows to the head, chest, legs, and stomach, pull them down, kick dirt on them. This happened every day. ... Some days we would just get bored so we would have everyone sit in a corner and then make them get in a pyramid. This was before Abu Ghraib but just like it. We did that for amusement.<sup>150</sup>

Fishback also confirmed the similarity to Abu Ghraib: "When we were at FOB Mercury [Forward Operating Base Mercury, outside of Fallujah], we had prisoners that were stacked in pyramids, not naked but they were stacked in pyramids." He adds that at Mercury,

they said that they had pictures that were similar to what happened at Abu Ghraib, and because they were so similar to what happened at Abu Ghraib, the soldiers destroyed the pictures. They burned them. The exact quote was, "They were getting in trouble for the same things we were told to do, so we destroyed the pictures."<sup>151</sup>

Fishback says that he was under the impression that the Geneva Conventions did not apply in Iraq and he didn't know what rules did. Continuing the comparison with Abu Ghraib, he says,

now, all that stuff with sodomy with the chem light and all that was clearly beyond what I would have allowed to happen on a personal moral level and what I thought policy was. But the other stuff, guys handcuffed naked to cells in uncomfortable positions, guys placed in stress positions, guys placed in stress positions on boxes, people stripped naked. All that was ... if I had seen it, I would have thought it was in accordance with interrogation procedures.<sup>152</sup>

Still, Fishback sought out clearer guidelines. He took his concerns to his former West Point classmates, then to an officer with the Rangers, an army chaplain, his company commander, his battalion commander, a judge advocate general, the inspector general's office, and the secretary of the army. No one could explain the policy or offer him an applicable standard for treatment, and he was warned not to press the issue. Eventually he wrote to Republican senators John Warner and John McCain.<sup>153</sup>

McCain, himself a former POW and a victim of torture, was determined to clarify the matter. "Confusion about the rules results in abuses in the field," he said.<sup>154</sup> So in the fall of 2005, McCain attached an amendment to a defense spending bill that would limit the military to the standard techniques listed in the Army Field Manual and would demand that "No individual under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment."<sup>155</sup>

McCain's proposal really only re-affirmed existing law, but it represented a major rebuke to the president. Despite intense lobbying by Vice President Dick Cheney and President Bush's explicit threat to veto the entire bill, the Senate voted 90 to 9 to include McCain's provisions. The administration then proposed a compromise that would categorically exempt the CIA from any such restrictions, and Cheney stepped up his pressure campaign—trying simultaneously to sway members of Congress and to stifle criticism from other parts of the administration. According to press reports, Cheney's staff took to Nixonesque tactics like stalling meetings, excluding cabinet members from important briefings, and intercepting National Security Council documents without the authors' knowledge.<sup>156</sup> All the while, the president continued to tell the public that "We do not torture."<sup>157</sup>

Bush ultimately did sign the McCain anti-torture law. But at the same time, he also issued a "signing statement" reserving his right to override the bill's provisions, citing "the constitutional authority of the President ... as Commander in Chief."<sup>158</sup> This outcome may be disappointing, but it is really in keeping with the Bush administration's whole philosophy of human rights. Comedian Peter Sagal concisely explained Bush's position: "First, we do no use torture, period. And second, you can't stop us from doing it."<sup>159</sup>

### THE WAR AGAINST INTERNATIONAL LAW: THE UNITED STATES VERSUS THE WORLD

One problem with the "migration theory" is that it becomes necessary to account for each and every one of the multiplicity of cases. While the account I've offered here does neatly explain how authorized practices at Guantánamo produced abuses at Abu Ghraib, it is somewhat harder to explain the very similar abuses that occurred elsewhere. This difficulty owes its existence to an unfounded assumption inherent to the Schlesinger Commission's approach, and thus to its conclusion. Like the administration's most steadfast defenders, the Schlesinger Commission treats torture as an aberration; while Defense Secretary Rumsfeld and Senator Inhofe insist that it was isolated to a few grunts at Abu Ghraib, the Schlesinger, Fay, and Taguba reports implicitly treat it as a unique aspect of the War on Terror.

We might instead view the migration theory more broadly, looking less at the movement of tactics and policies, and more at the overall institutional culture and political climate. Perhaps the actual routes of transfer are less important than the example set by those in charge. Milton Bearden, a former CIA official, insists,

It doesn't matter what distribution that [Bybee] memo had or how tightly it was controlled. That kind of thing will permeate the system by word of mouth. Anyone who suggests that this and other official memos on the subject don't have an impact, doesn't know how these things work on the ground. ... The message is this is coming from the top, and whatever you're doing is okay if you're doing it for the commander in chief.<sup>160</sup>

One might suggest, then, that President Bush's whole attitude toward the rule of law—and international law in particular—created a climate in which torture seemed acceptable.

For example, the US has refused to sign the Optional Protocol to the UN Convention Against Torture, which created a voluntary system for inspecting detention facilities (including domestic prisons). And the US didn't just opt out of the protocol; it opposed creating it at all and tried, unsuccessfully, to block its passage in the General Assembly. The final vote, on December 18, 2002, found 127 in favor and 4 (including the US) opposed.<sup>161</sup>

This vote was just one in a series of similar signals sent from the administration since the September 11 attacks. In December 2001, the US boycotted a conference of the High Contracting Parties of the Geneva Conventions.<sup>162</sup> In the spring of 2002, Mexico proposed a resolution to the UN Commission on Human Rights emphasizing the importance of respect for human rights in fighting terrorism. The resolution did not condemn any country, it merely reaffirmed the principle. But the United States, Algeria, India, Pakistan, and Saudi Arabia seemed to take the gesture as a personal affront. These countries opposed the resolution, leading Mexico to withdraw it.<sup>163</sup>

The record is much the same on issues like environmental protection, nuclear proliferation, biological and chemical weaponry, the embargo against Cuba, and combating racism.<sup>164</sup> Still, of the administration's whole ugly record, perhaps nothing has done so much to symbolize its lawless approach—or to establish real impunity in the military—as the government's rejection of the International Criminal Court (ICC).

On his way out of office, and after a great deal of diplomatic foot-dragging, President Bill Clinton signed the treaty creating the court. But rather than present it to the Senate for ratification, Bush retroactively removed the US signature. Thus, the government's official position is that the agreement is not binding—a fact stressed in the August 2002 torture memos.<sup>165</sup>

Bush also took steps to insure US immunity from ICC prosecution. First he threatened to end US involvement in UN peacekeeping missions unless our soldiers were exempted from ICC jurisdiction. Then he took to bullying other governments, threatening to withdraw aid unless they promised to never deliver an American suspect to the court.<sup>166</sup>

Unfortunately, this disdain for international law is not unique to the executive branch. When the ICC began operations in March 2003, Congress promptly responded by passing the American Service Members' Protection Act. This law made good on at least one of Bush's threats by barring US military assistance to any country that has not signed an "Article 98" agreement—a pledge never to seek ICC prosecution against a US citizen. Congress even went so



far as to authorize the use of force to free any citizen facing charges at the court. Critics have derisively nicknamed this law the “Hague Invasion Act.”<sup>167</sup>

A comparable history would qualify most other nations as “rogue states.”<sup>168</sup> But the US enjoys a unique position in the global political system. As the only existing superpower, our government assumes the prerogative of conferring reality on international norms and determining the relevance of global institutions. This is what Bush meant, in 2002, when he warned the General Assembly that, unless it endorsed his policy on Iraq, the United Nations would be faced with “irrelevancy.”<sup>169</sup> Such is the nature of US leadership. International law is invoked, or denounced, or forgotten, as political expedience requires. But in no case can the law become enforceable, lest it actually constrain American action, or undercut the privileges of empire.

## NOTES

<sup>1</sup> Paul Harris and Burhan Wazir, “Briton Tells of Ordeal in Bush’s Torture Jail,” *Guardian*, December 29, 2002. Many of these same details were reported in the American press, though less consistently than in international media. Until the Abu Ghraib scandal broke, torture stories appeared only sporadically, were rarely followed up, and mostly stayed off the front pages. The major exception, domestically, was the coverage by the *Washington Post*.

<sup>2</sup> Quoted in Human Rights Watch, “Timeline of Detainee Abuse Allegations and Responses” (May 4, 2004).

<sup>3</sup> Peter Slevin and Robin Wright, “Pentagon Was Warned of Abuse Months Ago: US Officials, Rights Groups Sought Changes,” *Washington Post*, May 8, 2004.

<sup>4</sup> Human Rights Watch, “Timeline of Detainee Abuse.” Kellenberg quoted in Slevin and Wright, “Pentagon Was Warned.”

<sup>5</sup> Amnesty International, “United States of America: Human Dignity Denied; Torture and Accountability in the ‘War on Terror’” (October 27, 2004).

<sup>6</sup> Quoted in Mark Leibovich, “The Scandal Scandal?” *Washington Post*, May 13, 2004.

<sup>7</sup> [James R. Schlesinger, chair,] “Final Report of the Independent Panel to Review DoD Operations (The Schlesinger Report),” in *Torture and Truth: America, Abu Ghraib, and the War on Terror*, by Mark Danner (New York: New York Review Books, 2004), 375.

<sup>8</sup> As we shall see, they did not “migrate” on their own but rather were herded along from prison to prison.

<sup>9</sup> Quoted in Amnesty International, "USA: Human Dignity Denied."

<sup>10</sup> Ibid.

<sup>11</sup> [Author redacted], "To: Harrington, TJ. (Div 13) (FBI), Subject: Instructions to GTMO Interrogators," email, May 10, 2004, [http://www.aclu.org/torturefoia/released/t3131\\_3133.pdf](http://www.aclu.org/torturefoia/released/t3131_3133.pdf) (accessed August 5, 2005).

<sup>12</sup> [Author redacted], "Subject: RE GTMO," e-mail, August 2, 2004, <http://www.aclu.org/torturefoia/released/FBI.121504.5053.pdf> (accessed March 18, 2005). Paragraph breaks added.

The agents' concern for the prisoners was not entirely humanitarian. The feds were particularly worried about military interrogators posing as agents from other organizations, including the FBI. One wrote, "These tactics have produced no intelligence of a threat neutralization nature to date and ... have destroyed any chance of prosecuting this detainee. ... If this detainee is ever released or his story made public in any way, DOD interrogators will be not be held accountable because these torture techniques were done by the 'FBI' interrogators. The FBI will be left holding the bag before the public." [Author redacted], "To: Gary Bald, [et al.], Subject: Fwd: Impersonating FBI at GTMO," e-mail, December 5, 2003, <http://www.aclu.org/torturefoia/released/FBI.121504.3977.pdf> (accessed March 18, 2005).

<sup>13</sup> "Guantánamo has become the gulag of our times, entrenching the notion that people can be detained without recourse to the law." Amnesty International, "Amnesty International Report 2005: Speech by Irene Khan at Foreign Press Association" (May 25, 2005).

<sup>14</sup> Howard Zinn, *A People's History of the United States, 1492–Present* (New York: HarperPerennial, 1995), 294–305.

<sup>15</sup> Michael Ratner, "The War on Terrorism: The Guantánamo Prisoners, Military Commissions, and Torture," in *Lost Liberties: Ashcroft and the Assault on Personal Freedom*, ed. Cynthia Brown (New York: New Press, 2003), 138–139.

<sup>16</sup> During the early 1990s, the base was used as a concentration camp for Haitian refugees trying to reach the US, and its extra-jurisdictional status dates from that period. Ratner, "The War on Terrorism," 139–140.

<sup>17</sup> Quoted in David Rose, *Guantánamo: The War on Human Rights* (New York: New Press, 2004), 22.

<sup>18</sup> Quoted in Rose, *Guantánamo*, 22.

<sup>19</sup> Rose, *Guantánamo*, 154–155.

<sup>20</sup> Republican senator Lindsey Graham, writing in the *Washington Post*, explained his proposal: "The amendment replaces unlimited habeas corpus petitions with a one-time appeal right to the U.S. Court of Appeals for the District of Columbia Circuit. The review covers whether the formulation and implementation of the practices in place at Guantánamo

Bay are constitutional and, in each individual case, whether the military correctly followed procedures. In addition, the amendment requires federal court review of any military commission conviction involving a war crime and a sentence of 10 or more years. The court can choose to review cases with sentences of less than 10 years, and the Supreme Court will have the right to review lower court actions if petitioned." Lindsey Graham, "Rules for Our War," *Washington Post*, December 6, 2005.

Graham's amendment passed the Senate by a vote of 84-14 and became a part of the same defense spending bill as an anti-torture rule proposed by Senator John McCain. The new law significantly narrowed the protections offered the Guantánamo prisoners. Detained individuals would be able to challenge the procedures under which they are tried and convicted but would not be able to challenge their imprisonment per se. And the one thing does not necessarily have much to do with the other, as the Department of Defense's general counsel, William J. Haynes, explained at a March 21, 2002 press conference: "If we had a trial right this minute, it is conceivable that somebody could be tried and acquitted of that charge, but might not automatically be released. ... The people that we now hold at Guantánamo are held for a specific reason that is not tied specifically to any particular crime. They're not held—they're not being held on the basis that they are necessarily criminals." Quoted in Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004), 74-75.

<sup>21</sup> Jane Mayer, "Outsourcing Torture: The Secret History of America's 'Extraordinary Rendition' Program," *New Yorker*, 14 February 2005 and 21 February 2005, 123.

<sup>22</sup> "One Huge US Jail," *Guardian*, March 19, 2005.

<sup>23</sup> Human Rights Watch, "The United States' 'Disappeared': The CIA's Long-Term 'Ghost Detainees'" (October 2004). These secret prisons will be discussed in more detail in Chapter 4.

<sup>24</sup> Human Rights Watch, "The Road to Abu Ghraib" (June 2004).

<sup>25</sup> Human Rights Watch, "Guantánamo: Detainee Accounts" (October 2004); Rose, *Guantánamo*, 50-51; and Tania Branigan and Vikram Dodd, "Afghanistan to Guantánamo Bay—The Story of Three British Detainees," *Guardian*, August 4, 2004.

<sup>26</sup> Quoted in Michael Ratner and Ellen Ray, *Guantánamo: What the World Should Know* (White River Junction, VT: Chelsea Green Publishing, 2004), 43.

<sup>27</sup> Quoted in Human Rights Watch, "Guantánamo: Detainee Accounts."

<sup>28</sup> Rose, *Guantánamo*, 52-53.

<sup>29</sup> Ratner, "The War on Terrorism," 136.

<sup>30</sup> Rose, *Guantánamo*, 59-60.

<sup>31</sup> *Ibid.*, 87.

- <sup>32</sup> Quoted in James Meek, "People the Law Forgot," *Guardian*, December 3, 2003.
- <sup>33</sup> Physicians for Human Rights, "Break Them Down: Systematic Use of Psychological Torture by US Forces" (2005), 44. I discuss super-maximum security prisons in Chapter 6.
- <sup>34</sup> Ratner and Ray, *Guantánamo: What the World Should Know*, 43.
- <sup>35</sup> Rose, *Guantánamo*, 89.
- <sup>36</sup> Quoted in Rose, *Guantánamo*, 90.
- <sup>37</sup> Quoted in Human Rights Watch, "Guantánamo: Detainee Accounts."
- <sup>38</sup> Rose, *Guantánamo*, 120. Shafiq Rasul was the named plaintiff in *Rasul v. Bush* (2004), which led to the Supreme Court's ruling that prisoners at Guantánamo must have access to the courts. Rasul had been released prior to the ruling.
- <sup>39</sup> Quoted in Rose, *Guantánamo*, 121.
- <sup>40</sup> *Ibid.*, 122.
- <sup>41</sup> Ratner and Ray, *Guantánamo: What the World Should Know*, 63-64.
- <sup>42</sup> Rose, *Guantánamo*, 132.
- <sup>43</sup> Quoted in Vikram Dodd, "Guantánamo Britons Sue Rumsfeld," *Guardian*, October 28, 2004.
- <sup>44</sup> An army translator who served in Guantánamo recalls: "The IRF process had evolved over time with the help of the Connecticut 902nd. It was widely known that IRFs now were being used punitively, not just as a way to get detainees to comply with commands, which was their original purpose. Now if an MP walked down the cellblock and someone threw a cup of water or urine on him, he'd report to the NCOIC [Non-Commissioned Officer in Charge], who would request an IRF team. And the IRF team would cast its net wide, going into the cells of three or four men nearest where the incident had occurred." Erik Saar and Viveca Novak, *Inside the Wire: A Military Intelligence Soldier's Eyewitness Account of Life at Guantánamo* (New York: Penguin, 2005), 134.
- <sup>45</sup> Quoted in Rose, *Guantánamo*, 71.
- <sup>46</sup> For example: When Mustafa Ait Idir was placed in a "discipline block," he refused to hand over his pants and shoes, and the ERF was sent in. They attacked with tear gas, and he fought them, knocking off one guard's face shield. Another guard then immobilized him by squeezing his testicles. The guards pinned him to the ground and slowly forced back one of his fingers, bending it until it broke. "Torture by Proxy," *New Yorker Online*, February 8, 2005, [http://www.newyorker.com/online/content/articles/050214on\\_onlineonly01](http://www.newyorker.com/online/content/articles/050214on_onlineonly01) (accessed February 10, 2005).
- <sup>47</sup> Quoted in Rose, *Guantánamo*, 73.
- <sup>48</sup> *Ibid.*, 73-74.
- <sup>49</sup> Rose, *Guantánamo*, 73-74.

- <sup>50</sup> Carol D. Leonnig and Dana Priest, "Detainees Accuse Female Interrogators: Pentagon Inquiry Is Said to Confirm Muslim's Accounts of Sexual Tactics at Guantánamo," *Washington Post*, February 10, 2005.

Physicians for Human Rights likewise found that "female interrogators used sexually provocative acts as part of interrogation. For example, female interrogators sat on detainees' laps and fondled themselves or detainees, opened their blouses and pushed their breasts in the faces of detainees, opened their skirts, kissed detainees, and if rejected, accused them of liking men, and forced detainees to look at pornographic pictures or videos." Physicians for Human Rights, "Break Them Down," 27.

- <sup>51</sup> Quoted in Saar and Novak, *Inside the Wire*, 222.

- <sup>52</sup> Saar and Novak, *Inside the Wire*, 223–224 and 226–228.

- <sup>53</sup> Carol D. Leonnig, "Further Detainee Abuse Alleged: Guantánamo Prison Cited in FBI Memos," *Washington Post*, December 26, 2004.

- <sup>54</sup> Quoted in Seymour M. Hersh, *Chain of Command: The Road From 9/11 to Abu Ghraib* (New York: HarperCollins, 2004), 12–13.

With this in mind, it is worth revisiting Specialist Sean Baker's response to the Extreme Reaction Force's violence. In his attempt to stop the assault, he did not cry out, "Stop it, you're hurting me!"—since that, of course, was what they meant to be doing. Neither did he remind them of his humanity, or of the Geneva Conventions, or of any other factor that might have universal implications for such behavior. Instead, he cried out, "I'm a US soldier." In effect, he said, *I'm one of the good guys! I'm one of you!* It may well have been the only thing he *could* have said that would have stopped the attack.

- <sup>55</sup> Quoted in Amnesty International, "USA: Human Dignity Denied."

- <sup>56</sup> Ratner and Ray, *Guantánamo: What the World Should Know*, 14.

- <sup>57</sup> Ratner, "The War on Terrorism," 138.

- <sup>58</sup> Quoted in Rose, *Guantánamo*, 42.

- <sup>59</sup> Rose, *Guantánamo*, 82.

- <sup>60</sup> Quoted in Rose, *Guantánamo*, 112.

- <sup>61</sup> Erik Saar writes: "It didn't make sense that we were still holding some of these men. We obviously had no clue what to do with them, and there they sat, growing more and more despondent, more and more of them giving up hope and trying to kill themselves, and fewer and fewer of them even being interrogated at all. We did have some bad guys, and some talkers, but from what I saw, there weren't many more than a few dozen such characters at Guantánamo." Saar and Novak, *Inside the Wire*, 192–193.

- <sup>62</sup> Quoted in Rose, *Guantánamo*, 159.

- <sup>63</sup> *Ibid.*, 58–59.



- <sup>64</sup> George Bush, "Memorandum for the Vice President, [et al.], Humane Treatment of al Qaeda and Taliban Detainees" (February 7, 2002), in Danner, *Torture and Truth*, 105–106.
- <sup>65</sup> Mayer, "Outsourcing Torture," 114.
- <sup>66</sup> Quoted in Amnesty International, "USA: Human Dignity Denied."
- <sup>67</sup> Alberto R. Gonzales, "Memorandum for the President, Decision RE Application of the General Convention Prisoners of War to the Conflict with Al Qaeda and the Taliban" (January 25, 2002), in Danner, *Torture and Truth*, 84.
- <sup>68</sup> Much of the discussion here is from my article, "Gonzales Abandons Principles That Become Inconvenient," *Los Angeles Daily Journal*, December 17, 2004. Attorney General John Ashcroft endorsed this position—and also reiterated, perhaps unwittingly, its illegality. As he eloquently notes in a February 1, 2002 letter to the president, "Presidential determination against treaty applicability would provide the highest assurance that no court could subsequently entertain charges that American military officers, intelligence officials, or law enforcement officials violated Geneva Convention rules relating to field conduct, detention conduct [or] interrogation of detainees. The War Crimes Act of 1996 makes violation of parts of the Geneva Conventions a crime in the United States." Quoted in Amnesty International, "USA: Human Dignity Denied."
- <sup>69</sup> Jay S. Bybee, "Memorandum for Alberto R. Gonzales, Counsel for the President, Standards of Conduct for Interrogation Under 18 USC. [sections] 2340–2340A" (August 1, 2002) in Danner, *Torture and Truth*, 126.
- <sup>70</sup> *Ibid.*, 118, 155.
- <sup>71</sup> *Ibid.*, 149. The White House revised its legal opinion on December 30, 2004, clearing the way for Alberto Gonzales's confirmation as attorney general. The new opinion denies that the president can override treaties, offers a more conventional definition of torture, and revises the "specific intent" requirement—but leaves in place loopholes allowing for mental torture. For details, see Physicians for Human Rights, "Break Them Down," 78–79.
- At least one lawyer involved in crafting the 2002 torture memos, John Yoo, stands by his work. See John C. Yoo, "A Crucial Look at Torture Law," in *Civil Liberties Vs. National Security in a Post-9/11 World*, eds. Katherine B. Darmer et al. (Amherst, NY: Prometheus Books, 2004).
- <sup>72</sup> Indeed such reasoning *has* been used to justify warrantless wiretaps. In 2002, the Justice Department argued in a court brief, "The Constitution vests in the President inherent authority to conduct warrantless intelligence surveillance (electronic or otherwise) of foreign powers or their agents, and Congress cannot by statute extinguish that constitutional authority." Building on this argument, Bush issued a

secret order authorizing the National Security Agency to eavesdrop on phone calls originating within the United States. James Risen and Eric Lichtblau, "Bush Secretly Lifted Some Limits on Spying in U.S. After 9/11, Officials Say," *New York Times*, December 15, 2005.

<sup>73</sup> Jerald Pfifer, "Memorandum for Commander, Joint Task Force 170, Subject: Request for Approval of Counter-Resistance Strategies" (October 11, 2002), in Danner, *Torture and Truth*, 167–168.

<sup>74</sup> Josh White, "Abu Ghraib Tactics Were First Used at Guantánamo," *Washington Post*, July 14, 2005.

<sup>75</sup> Diane E. Beaver, "Legal Brief of Proposed Counter-Resistance Strategies" (October 11, 2002), in Danner, *Torture and Truth*, 176.

<sup>76</sup> Michael B. Dunlavey, "Memorandum for Commander, United States Southern Command, Subject: Counter-Resistance Strategies" (October 11, 2002), in Danner, *Torture and Truth*, 178; and James T. Hill, "Memorandum for Chairman of the Joint Chiefs of Staff, Subject: Counter-Resistance Techniques" (October 25, 2002), in Danner, *Torture and Truth*, 179–180.

<sup>77</sup> William J. Haynes II, "For: Secretary of Defense, Subject: Counter-Resistance Techniques" (November 27, 2002), in Danner, *Torture and Truth*, 181–182; Donald Rumsfeld, "Memorandum for Commander USSOUTHCOM, Subject: Counter-Resistance Techniques" (January 15, 2003) in Danner, *Torture and Truth*, 183; and Donald Rumsfeld, "Memorandum for the General Counsel of the Department of Defense, Subject: Detainee Interrogations" (January 15, 2003), in Danner, *Torture and Truth*, 184.

<sup>78</sup> "Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations" (April 4, 2003), in Danner, *Torture and Truth*, 187–198. Techniques are listed on 190–192.

<sup>79</sup> Donald Rumsfeld, "Memorandum for the Commander, US Southern Command, Subject: Counter-Resistance Techniques in the War on Terrorism" (April 16, 2003), in Danner, *Torture and Truth*, 199–204.

For an overview of this entire chronology, see Amnesty International, "USA: Human Dignity Denied."

<sup>80</sup> Quoted in Human Rights Watch, "The Road to Abu Ghraib."

<sup>81</sup> Quoted in Julian Borger, "'Soft' Guantánamo Chief Ousted," *Guardian*, October 16, 2002.

<sup>82</sup> Rose, *Guantánamo*, 86; and Hersh, *Chain of Command*, 13.

<sup>83</sup> Quoted in Suzanne Goldenberg, "Former Guantánamo Chief Clashed With Army Interrogators: General's Sacking Cleared Way for Pentagon to Rewrite Rules," *Guardian*, May 19, 2004.

<sup>84</sup> Goldenberg, "Former Guantánamo Chief."

<sup>85</sup> Hersh, *Chain of Command*, 13–14.

<sup>86</sup> Goldenberg, "Former Guantánamo Chief."

<sup>87</sup> Quoted in Amnesty International, "USA: Human Dignity Denied"; and Human Rights Watch, "Guantánamo: Detainee Accounts."

<sup>88</sup> Quoted in Rose, *Guantánamo*, 84.

<sup>89</sup> Geoffrey D. Miller, "Assessment of DoD Counterterrorism Interrogation and Detention Operations in Iraq" (September 13, 2003), in Danner, *Torture and Truth*, 209.

<sup>90</sup> Quoted in R. Jeffrey Smith, "Documents Helped Sow Abuse, Army Report Finds: Top Officials Did Not Make Interrogation Policies Clear," *Washington Post*, August 30, 2004.

<sup>91</sup> Smith, "Document Helped Sow Abuse." The Schlesinger report explains:  
 "[Miller] brought the Secretary of Defense's April 16, 2003 policy guidelines for Guantánamo with him and gave this policy to CJTF-7 as a possible model for the command-wide policy that he recommended be established. MG Miller noted that it applied to unlawful combatants at Guantánamo and was not directly applicable to Iraq, where the Geneva Conventions applied. In part as a result of MG Miller's call for strong, command-wide interrogation policies and in part as a result of a request for the guidance coming up from the 519th at Abu Ghraib, on September 14, 2003, LTG Sanchez signed a memorandum authorizing a dozen interrogation techniques beyond Field Manual 34-52—five beyond those approved for Guantánamo. ...

"MG Miller had indicated this model was approved only for Guantánamo. However, CJTF-7, *using reasoning from the President's memorandum* of February 7, 2003, which addressed 'unlawful combatants,' believed additional tougher measures were warranted because there were 'unlawful combatants' mixed in with Enemy Prisoners of War and civilian and criminal detainees. The CJTF-7 Commander, on the advice of his Staff Judge Advocate, believed he had the inherent authority of the Commander in a Theater of War to promulgate such a policy and make determinations as to the categorization of detainees under the Geneva Conventions. CENTCOM viewed the CJTF-7 policy as unacceptably aggressive and on October 12, 2003, Commander CJTF-7 rescinded his September directive and disseminated methods only slightly stronger than those in Field Manual 34-52. ... The policy memos promulgated at CJTF-7 level allowed for interpretation in several areas and did not adequately set forth the limits of interrogation techniques. *The existence of confusing and inconsistent interrogation technique policies contributed to the belief that additional interrogation techniques were condoned.*"

Schlesinger, "Final Report," 334. Emphasis added.

<sup>92</sup> Quoted in Amnesty International, "USA: Human Dignity Denied." The Working Group uses this language in "Working Group Report," 189.

- <sup>93</sup> Quoted in Human Rights Watch, "The Road to Abu Ghraib." The Schlesinger Commission adds that this language was taken directly from the 1987 version of FM 34-52. Schlesinger, "Final Report," 337.
- <sup>94</sup> Hersh, *Chain of Command*, 30–31.
- <sup>95</sup> Human Rights Watch, "The Road to Abu Ghraib."
- <sup>96</sup> Quoted in Rose, *Guantánamo*, 84.
- <sup>97</sup> International Committee of the Red Cross [ICRC], "Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment, and Interrogation" (February 2004), in Danner, *Torture and Truth*, 262.
- <sup>98</sup> Quoted in Amnesty International, "USA: Human Dignity Denied."
- <sup>99</sup> Hersh, *Chain of Command*, 32.
- <sup>100</sup> "(Alleged) Letter from Moazzam Begg to US Forces Administration; JTF/JD 06, Guantánamo Bay, Cuba," July 12, 2004, <http://www.guardian.co.uk/leaders/story.101363202,00.htm> (accessed December 7, 2004), 3.
- <sup>101</sup> Chris Mackey and Greg Miller, *The Interrogators: Inside the Secret War Against Al Qaeda* (New York: Little, Brown and Company, 2004), 259.
- <sup>102</sup> *Ibid.*, 456
- <sup>103</sup> *Ibid.*, 3–5.
- <sup>104</sup> Quoted in Amnesty International, "USA: Human Dignity Denied."
- <sup>105</sup> R. Jeffrey Smith, "General Cites Problems at US Jails in Afghanistan," *Washington Post*, December 3, 2004.
- <sup>106</sup> Human Rights Watch, "The Road to Abu Ghraib."
- Quote from Suzanne Goldenberg and James Meek, "Papers Reveal Bagram Abuse," *Guardian*, February 18, 2005.
- <sup>107</sup> Goldenberg and Meek, "Papers Reveal Bagram Abuse."
- <sup>108</sup> [Authors redacted] "Autopsy Examination Report: [name redacted]; Autopsy A02-95," February 25, 2003, <http://action.aclu.org/torturefoia/released/102405/> (accessed December 20, 2005).
- <sup>109</sup> Quoted in Tim Golden, "In U.S. Report, Brutal Details of 2 Afghan Inmates' Deaths; The Bagram File: First of Two Articles," *New York Times*, May 20, 2005.
- <sup>110</sup> Quoted in Tim Golden, "Abuse Case Opens Command Issue at Army Prison," *New York Times*, August 8, 2005.
- <sup>111</sup> Quoted in Golden, "In U.S. Report, Brutal Details."
- Salcedo has since admitted to kicking Dilawar in the knees and thighs, grabbing him by the ears, and pulling him upward when he failed to hold stress positions. She was demoted, reprimanded, and fined \$1000. Golden, "Abuse Case Opens Command Issue."
- <sup>112</sup> Quoted in Golden, "In U.S. Report, Brutal Details."

Walls plead guilty to dereliction of duty and assault. He was sentenced to two months in jail, a reduction in rank, and a bad conduct

discharge. Walls admitted to pushing Dilawar into a wall. He also says that he stood by while Salcedo lifted Dilawar by the ear and while Claus forced another prisoner to kiss the soldiers' boots. "National Briefing Southwest: Texas: Soldier Sentenced in Detainee Death," *New York Times*, August 24, 2005.

- <sup>113</sup> Douglas Jehl, "Army Details Scale of Abuse in Afghan Jail," *New York Times*, March 12, 2005. Abdur Ramin and Parkhudin, who were arrested with Dilawar, said they were held in isolation cells, hooded, with their hands chained to the ceiling. They also said that they were forced to strip in the presence of female soldiers, and were subjected to humiliating and painful rectal exams. The two men were later transferred to Guantánamo Bay, where they said they found better treatment than at Bagram. A year later, both men were released without charges. Human Rights Watch, "The Road to Abu Ghraib"; Amnesty International, "USA: Human Dignity Denied"; and Golden, "In U.S. Report, Brutal Details."

<sup>114</sup> Quoted in Golden, "In U.S. Report, Brutal Details."

<sup>115</sup> Quoted in Golden, "Abuse Case Opens Command Issues."

<sup>116</sup> Golden, "In U.S. Report, Brutal Details."

<sup>117</sup> Ibid.

<sup>118</sup> "3 Charged in Prisoner Abuse Case," *New York Times*, September 14, 2005. The Criminal Investigations Command report describes Beiring as "culpably inefficient in the performance of his duties, which allowed a number of his soldiers to mistreat detainees, ultimately leading to Habibullah's death, thus constituting negligent homicide." Quoted in Jehl, "Army Details Scale of Abuse."

<sup>119</sup> Thom Shanker, "U.S. Army Inquiry Implicates 28 Soldiers in Deaths of 12 Afghan Detainees," *New York Times*, October 15, 2004.

<sup>120</sup> Quoted in Golden, "In U.S. Report, Brutal Details."

<sup>121</sup> Quoted in Jehl, "Army Details Scale of Abuse."

<sup>122</sup> Golden, "In U.S. Report, Brutal Details."

<sup>123</sup> Thomas E. Ricks, "Abuse Inquiry Cites 26 Soldiers: 2 Deaths in Afghanistan Led to Army Probe," *Washington Post*, September 1, 2004.

The Criminal Investigations Command report describes the techniques used in the two prisons as "remarkably similar." Quoted in Golden, "In U.S. Report, Brutal Details."

<sup>124</sup> Mackey and Miller, *The Interrogators*, 285.

<sup>125</sup> Ibid., 288–289.

<sup>126</sup> Ibid., 314.

<sup>127</sup> Ibid., 471–472. Later he adds: "By the time we left Afghanistan, we had come to embrace methods we would not have countenanced at the beginning of the war. And while those who followed us at Bagram dismissed much of the so-called wisdom we sought to pass on, they took to monsterring with alacrity. Indeed, as we left, it was clear they did not



regard this a method of last resort, but as a primary option in the interrogation playbook. What was an ending point for us was a starting point for them. And during their stint in Afghanistan, they undeniably added their own plays, many of which were probably exported to Iraq. As the battle against Al Qaeda shifted to a battle against Saddam Hussein and the Iraqi insurgency, pressure to adopt more aggressive methods must have only intensified, and the trend line we established was reinforced." Ibid., 476.

<sup>128</sup> Golden, "In U.S. Report, Brutal Details."

<sup>129</sup> Schlesinger, "Final Report," 333.

<sup>130</sup> Amnesty International, "USA: Human Dignity Denied."

<sup>131</sup> Human Rights Watch, "The Road to Abu Ghraib."

<sup>132</sup> Ibid. The Fay report notes that "sleep adjustment was brought with the 519 MI Battalion from Afghanistan." George R. Fay, "AR 15-6 Investigation of the Abu Ghraib Detention Facility and the 205th Military Intelligence Brigade," in Danner, *Torture and Truth*, 506.

Moreover, an interviewer asked Tony Lagouranis, who worked as an interrogator at Abu Ghraib: "Do you have any doubt that [interrogation techniques] migrated from Afghanistan to Guantánamo, to Abu Ghraib, to Iraq in general?" Lagouranis replied: "There were a lot of people and a lot of interrogators who had worked in all three places. And they were telling the less experienced interrogators about what interrogation is like, what you do, what's effective, what's not. And very little about what is not allowed." Quoted in "The Torture Question; Interview: Tony Lagouranis," *Frontline*, PBS, September 25, 2005, <http://www.pbs.org/wgbh/pages/frontline/torture/interviews/lagouranis.html> (accessed November 15, 2005).

<sup>133</sup> Josh White, "5 Soldiers Charged With Abuse of Detainees," *Washington Post*, November 8, 2005.

<sup>134</sup> "Five U.S. Soldiers Sentenced," *The Columbian* (Vancouver, WA), December 20, 2005.

<sup>135</sup> Thomas E. Ricks, "Detainee Abuse by Marines Is Detailed: Variety of Units in Iraq Involved," *Washington Post*, December 15, 2004.

<sup>136</sup> R. Jeffrey Smith and Dan Eggen, "New Papers Suggest Detainee Abuse Was Widespread," *Washington Post*, December 22, 2004.

<sup>137</sup> Quoted in Amnesty International, "USA: Human Dignity Denied."

<sup>138</sup> Douglas Jehl, "Pentagon Will Not Try 17 G.I.'s Implicated in Prisoners' Deaths," *New York Times*, March 26, 2005.

<sup>139</sup> Amnesty International, "USA: Human Dignity Denied."

The autopsy report in this case is available at the ACLU's website: "Autopsy Reports Reveal Homicides of Detainees in U.S. Custody" (October 24, 2005), <http://action.aclu.org/torturefoia/released/102405/> (accessed December 20, 2005).

<sup>140</sup> Amnesty International, "USA: Human Dignity Denied." The autopsy offers additional details: "According to the investigative report provided by US Army CID, the decedent was shackled to the top of a doorframe with a gag in his mouth at the time he lost consciousness and became pulseless. The severe blunt force injuries, the hanging position, and the obstruction of the oral cavity with a gag contributed to this individual's death. The manner of death is homicide." [Author Redacted], "Final Autopsy Report: [Name Redacted]; Autopsy ME0414," (April 30, 2004), 7, <http://action.aclu.org/torturefoia/released/102405/> (accessed December 20, 2005).

<sup>141</sup> Human Rights Watch, "The Road to Abu Ghraib."

<sup>142</sup> L. E. Jacoby, "Info Memo, For: Under Secretary of Intelligence, Subject: Alleged Detainee Abuse by TF 6-26 Personnel" (June 25, 2004), [http://www.aclu.org/torturefoia/released/t2596\\_0297.pdf](http://www.aclu.org/torturefoia/released/t2596_0297.pdf) (accessed March 18, 2005).

Cambone, the first-ever under secretary of defense for intelligence, stands just one step below Donald Rumsfeld and has the responsibility of overseeing all of the Pentagon's intelligence operations. Thom Shanker, "For Military Intelligence, a New Favorite Commando," *New York Times*, April 11, 2003.

<sup>143</sup> R. Jeffrey Smith, "4 Disciplined for Abuse of Iraqis," *Washington Post*, December 9, 2004. Tasers are discussed in more detail in Chapter 6.

Interrogator Tony Lagouranis did not mention any unit by name, but he did say, "The worst stuff I saw was from the detaining units who would torture people in their homes. They were using things like ... burns. They would smash people's feet with the back of an axe-head. They would break bones, ribs, you know. That was serious stuff. ... I remember one guy who was forced to sit on an exhaust pipe on a humvee, and he had a pretty huge blister on his leg. Another guy, I don't know what they used to burn him, his legs. He was blindfolded so he didn't know either, but it looked like it might have been a lighter. He had some pretty big, [some] smaller blisters, but a lot of them." Quoted in "The Torture Question," *Frontline*, PBS, September 25, 2005.

<sup>144</sup> Quoted in Josh White, "US Generals in Iraq Were Told of Abuse Early, Inquiry Finds," *Washington Post*, December 1, 2004.

<sup>145</sup> Hersh, *Chain of Command*, 16.

<sup>146</sup> *Ibid.*, 50.

<sup>147</sup> Darius Rejali, "Speaking Frankly About Torture" (lecture, Reed College, Portland, OR, November 13, 2004).

<sup>148</sup> Josh White, "3 More Navy SEALs Face Abuse Charges: Sailors Linked to Two Deaths in Iraq," *Washington Post*, September 25, 2004.

For the autopsy report, see ACLU, "Autopsy Reports Reveal Homicides of Detainees in U.S. Custody" (October 24, 2005), <http://action.aclu.org/torturefoia/released/102405/> (accessed December 20, 2005).

- <sup>149</sup> "Account of Officer C, 82<sup>nd</sup> Airborne Division," in Human Rights Watch, "Leadership Failure: Firsthand Accounts of Torture of Iraqi Detainees by the U.S. Army's 82<sup>nd</sup> Airborne Division" (September 2005).

Fishback's statement was initially published anonymously, though he has since made his name public.

- <sup>150</sup> "Account of Sergeant A, 82<sup>nd</sup> Airborne Division," in Human Rights Watch, "Leadership Failure."

- <sup>151</sup> "Account of Officer C." Unfortunately, the 82<sup>nd</sup> Airborne is not unique in this regard. Unreleased photographs show masked soldiers with the 22<sup>nd</sup> Infantry Regiment pointing guns at bound and blindfolded prisoners and pushing one prisoner's head against the bars of his cage. Members of the 22<sup>nd</sup> told army investigators that they took the photos for sport but decided to get rid of them after the pictures of Abu Ghraib became public. One soldier explained, "I realized there would be another public outrage if these pictures got out, so they were destroyed." However, a few of the photographs fell into the hands of the Criminal Investigations Command, and six soldiers received administrative punishments. R. Jeffrey Smith, "Army Files Cite Abuse of Afghans; Special Forces Unit Prompted Senior Officers' Complaints," *Washington Post*, February 18, 2005.

- <sup>152</sup> Ibid.

- <sup>153</sup> Ibid.

- <sup>154</sup> John McCain, "McCain Statement on Detainee Amendments, press release," October 5, 2005, [http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewPressRelease&Content\\_id=1611](http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewPressRelease&Content_id=1611) (accessed December 1, 2005).

- <sup>155</sup> Amendment 1977, "Bill Summary & Statutes for the 109<sup>th</sup> Congress," S10908-S10909. <http://thomas.loc.gov/cgi-bin/query/c?r109:/temp/r109BdAv7H> (accessed November 11, 2005).

- <sup>156</sup> Dana Priest and Robin Wright, "Cheney Fights Detainee Policy," *Washington Post*, November 7, 2005.

- <sup>157</sup> Quoted in Steve Inskeep, "Analysis: Bush Defends US Treatment of Detainees," *Morning Edition*, NPR, November 7, 2005. Database: Newspaper Source (accessed November 9, 2005).

- <sup>158</sup> Quoted in Charlie Savage, "Bush Could Bypass New Torture Ban," *Boston Globe*, January 4, 2006.

- <sup>159</sup> *Wait, Wait ... Don't Tell Me!*, NPR and WBEZ, December 17, 2005.

- <sup>160</sup> Quoted in Rose, *Guantánamo*, 96.

- <sup>161</sup> Amnesty International, "USA: Human Dignity Denied"; and Kenneth Roth, "Human Rights, the Bush Administration, and the Fight Against

Terrorism: The Need for a Positive Vision," in *Lost Liberties: Ashcroft and the Assault on Personal Freedom*, ed. Cynthia Brown (New York: The New Press, 2003), 248. The other No votes came from Nigeria, the Marshall Islands, and Palau.

<sup>162</sup> Noam Chomsky, *Hegemony or Survival: America's Quest for Global Dominance* (New York: Metropolitan Books, 2003), 177–178.

<sup>163</sup> Roth, "Human Rights, the Bush Administration," 248. The General Assembly did pass a similar resolution that December, over US objections.

<sup>164</sup> For an extensive review of the US record concerning international law, see Ward Churchill, *On the Justice of Roosting Chickens: Reflections on the Consequences of US Imperial Arrogance and Criminality* (Oakland, CA: AK Press, 2003). For the period from September 11, 2001 to July 20, 2003, see 78–79 and 253–269.

<sup>165</sup> Amnesty International, "USA: Human Dignity Denied"; and Chalmers Johnson, *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic* (New York: Metropolitan Books, 2004) 73.

After threatening to do so for months, Bush finally withdrew the United States from the ICC treaty on May 6, 2002. State Department officials cited concerns about unchecked power and the danger of "politically motivated prosecutions." Donald Rumsfeld noted that the possibility of prosecution "could well create a powerful disincentive for U.S. military engagement in the world." Quoted in Peter Slevin, "U.S. Renounces Its Support of New Tribunal for War Crimes," *Washington Post*, May 7, 2002.

<sup>166</sup> Roth, "Human Rights, the Bush Administration," 249.

<sup>167</sup> Johnson, *The Sorrows of Empire*, 74; and Center for International Policy, "Just the Facts: A Civilian's Guide to U.S. Defense and Security Assistance to Latin America and the Caribbean; 'Article 98' Agreements and the International Criminal Court," April 4, 2005, <http://ciponline.org/facts/art98.htm> (accessed February 5, 2006).

<sup>168</sup> Both William Blum and Noam Chomsky have written books the titles of which make this simple point: William Blum, *Rogue State: A Guide to the World's Only Superpower* (Monroe, ME: Common Courage Press, 2000); and Noam Chomsky, *Rogue States: The Rule of Force in World Affairs* (Cambridge, MA: South End Press, 2000).

Chomsky has also written: "The criteria are fairly clear: a 'rogue state' is not simply a criminal state, but one that defies the orders of the powerful—who are, of course, exempt." Noam Chomsky, "Rogue States," in *Acts of Aggression: Policing "Rogue States"* (New York: Seven Stories Press, 1999), 52.

<sup>169</sup> Quoted in Churchill, *On the Justice of Roosting Chickens*, 259.

## CHAPTER 3

# ETHICS AND EMERGENCIES

BUT TO BE FAIR TO our country's leaders, we should consider another possibility. Perhaps President Bush and company are right, and the standards of international law are wrong. Maybe the absolute prohibition on torture is unrealistic. Indeed some argue that, under the right circumstances, torturing terrorists is exactly the right thing to do.

In August 2002, Jay S. Bybee, then the assistant attorney general, reasoned:

On September 11, 2001, al Qaeda launched a surprise covert attack on civilian targets in the United States that led to the deaths of thousands and losses of millions of dollars. According to public and government reports, al Qaeda has other sleeper cells within the United States that may be planning similar attacks. Indeed, al Qaeda plans apparently include efforts to develop and deploy chemical, biological, and nuclear weapons of mass destruction. Under these circumstances, a detainee may possess information that could enable the United States to prevent attacks that potentially could equal or surpass the September 11 attacks in their magnitude. Clearly, any harm that might occur during an interrogation would pale to insignificance compared to the harm avoided by preventing such an attack, which could take hundreds or thousands of lives.<sup>1</sup>

Thus far, we've seen how torture is used by the United States as a tactic in the War on Terror. This chapter considers the ethical reasoning invoked to justify such practices and explores the moral challenges confronting policy-makers, interrogators, and judges when they act in the midst of a crisis. It then evaluates one proposal to replace the absolute ban on torture with a regulatory system of judicial "torture warrants."

Many readers will find it incredible that the ban on torture can be subject to this sort of debate. But following September 11, some very powerful people—officials in the government and opinion



makers in the media and the universities—have put forward arguments to justify tactics beyond the established, legal limits. Those readers who refuse to countenance such views may wish to skip this chapter. But for those concerned about the underlying philosophical problems, I offer this opportunity to pause, briefly, and weigh the arguments supporting torture.<sup>2</sup>

#### A PHILOSOPHICAL FABLE: THE TICKING TIME BOMB

The standard example cited in defenses of torture is the “ticking time bomb” case. In its usual form, the situation is presented something like this: Suppose we learn that a fanatic has placed an atomic device somewhere in a major city, and it has been set to explode in the next several hours. The culprit has been caught but will not reveal the location of the bomb no matter what offer is made to him, and there is not time enough to evacuate the city. Should the authorities torture the terrorist to learn where the bomb is located?

In what is likely the best philosophical essay on the subject of torture, Henry Shue has written,

I can see no way to deny the permissibility of torture in a case *just like this*. ... [But] notice how unlike the circumstances of an actual choice about torture the philosopher's example is. The proposed victim of our torture is not someone we suspect of planting the device: he is the perpetrator. He is not some pitiful psychotic making one last ploy for attention: he *did* plant the device. The wiring is not backwards, the mechanism is not jammed: the device *will* destroy the city if not deactivated.

Much more important from the perspective of whether general conclusions applicable to ordinary cases can be drawn are background conditions that tend to be assumed. The torture will not be conducted in the basement of a small-town jail in the provinces by local thugs popping pills; the prime minister and chief justice are being kept informed; and a priest and a doctor are present. The victim will not be raped or forced to eat excrement and will not collapse with a heart attack or become deranged before talking; while avoiding irreparable damage, the antiseptic pain will carefully be increased only up to the point at which the necessary information is divulged, and the doctor will then

immediately administer an antidote and a tranquilizer. The torture is purely interrogational.

Most importantly, such incidents do not continue to happen.<sup>3</sup>

There are, in short, several features of the ticking time bomb case that are unlikely to be reproduced in real life. Some of these concern our practical knowledge of the situation—the certainty that the bomb exists (and works), that it can be defused and will not be triggered by the effort to do so, that there is no time to detect it otherwise, and that the man in custody is the one who placed the bomb. In the context of the 2003 US invasion of Iraq, Elaine Scarry points out the obvious limits of such governmental omniscience: “We have gone to war against a country that was ‘known’ to have weapons of mass destruction, only to find it had none.” Should we trust the same government to “know” whom to torture? The gamble is illustrated by a case from the French occupation of Algeria. In 1956, a Communist was caught planting a bomb. The police feared that he might have planted others before his capture and proposed torturing him to find out; their superiors refused. There was no explosion.<sup>4</sup>

In the real world, choices are never so stark as in the philosopher’s example—or options so severely limited, or knowledge of consequences so certain. Our willingness to engage in atrocities must then be greatly diminished in the face of such uncertainty. One cannot commit oneself to egregious acts simply *in the hope* that some good may come out of it.

In addition to the problems of knowledge, Shue also identifies certain unfounded assumptions about the procedure of torture. If torture is to be justified by necessity, then only the minimal amount of torture can be employed. No unnecessary cruelty can be countenanced, no excessive suffering inflicted. But, as we’ve seen, the actual practice of torture is not characterized by such restraint.

Likewise, it is taken as a premise that the ticking time bomb case is an *exception* to the usual prohibition on torture and that, even if extraordinary measures are taken this once, they will *not* become part of the usual practice. Again, we’ve seen the tendency for the exception to become the standard, and for practices adopted in an emergency to be applied henceforth in very different circumstances. Such tactical drift is especially likely in times of prolonged crisis or pronounced conflict, like our current War on Terror. As one military interrogator put it, “We were in a desperate race, hoping to foil another 9/11. Every interrogation held the promise of saving

lives if we did it well, and costing lives if we did not.”<sup>5</sup> In the minds of the security forces, there is *always* a ticking time bomb.

In his hypothetical case, Shue makes further political assumptions that he failed to specify. Torture would only be seen as a problem, for example, if the government had some sensitivity to human rights and matters of due process (or at least, was concerned for its public image). But the philosopher’s case also takes for granted that the government in question is basically legitimate and trustworthy—that it is not plagued by corruption and brutality, that it does not systematically discriminate against racial or religious groups, that it operates with some standard of transparency and accountability, that it allows the basic freedoms of thought, speech, and association, and that it does not seek to terrorize its citizens.

But perhaps the biggest problem with the ticking time bomb scenario is that it promotes a principle—a bald utilitarian calculus—that cannot be limited to cases like the one described. Jessica Montell, the executive director of B’Tselem, a human rights group in Jerusalem, shows how easy it is to stretch the justification to cover a wider range of scenarios:

Why stop at the bomb that’s already been planted and at people who know where the explosives are? Why not people who are building the explosives, or people who are donating money, or transporting the funds for the explosives? Why stop at the [bomber] himself? Why not torture the [bombers’] families, their relatives, their neighbors? If the end justifies the means, then where would you draw the line?<sup>6</sup>

The utilitarian calculus is ruthlessly indifferent to the guilt or innocence of those who suffer. If we accept the premise that one person’s rights and dignity “pale to insignificance” in the face of a threatened mass-casualty terrorist attack, then torture is not only *permitted* in ticking time bomb cases—it is morally *required*. And it really makes no difference *who* suffers the pain, or who inflicts it. If the individual’s standing is truly negated, then a government agent would be equally justified in torturing the bomber, or his accomplices, or a witness, or an uninvolved third party, as long as doing so would produce the desired result. If it is necessary to stop the attack, then it simply does not matter whether the electroshocks are applied to the jihadist or to the jihadist’s daughter, except for this—if better results will come from torturing the daughter, or if less torture will ultimately be required, then it *must be the daughter*.

Apologists for torture usually respond by somewhat arbitrarily ruling out this possibility, such as by “limiting [torture] to convicted terrorists who had knowledge of future massive terrorist acts, were given immunity, and still refused to provide the information.”<sup>7</sup> Such attempts at moderation really miss the point, because the argument used to justify torture is not amenable to this kind of ad hoc restriction. If we reject the justification for torturing the jihadist’s daughter (as we should), then we must also reject the utilitarian justification for torturing the jihadist himself, since the moral reasoning is the same.

We saw in the previous chapter that our government set out to allow a little torture, against select enemies, in specially designated locations, and that this authorization spread throughout the military like a virus and proved impossible to contain. According to my analysis here, we can see the migration of torture to Iraq as not only a product of organizational factors, but also as the logical conclusion to the arguments made by Jay Bybee, Alberto Gonzales, and their cohorts. Once the logic of torture was accepted in Guantánamo, it was easily applied elsewhere.

#### ANOTHER PHILOSOPHICAL FABLE: DIRTY HARRY

Tough-sounding slogans about the ends justifying the means make for poor policy. But at the level of action, we may still tend to feel that, in a ticking time bomb crisis, the best thing to do would be to torture the terrorist. And this sense likely remains even when we recognize the basic wrongness of what may be required.

US popular culture is very nearly obsessed with knights in dirty armor who heroically sacrifice their own moral standing for the sake of some higher good.<sup>8</sup> For example, in the 1971 movie *Dirty Harry*, police detective Harry Callahan finds himself in a situation analogous to the ticking time bomb scenario, though with much lower stakes. “Scorpio,” a psychotic killer, has kidnapped a young girl and sent a ransom note indicating that she will run out of air in some few hours. Harry (played by Clint Eastwood) delivers the money Scorpio has demanded, but the suspect refuses to reveal where he has hidden the girl, and attacks the detective instead. Harry defends himself, seriously injuring Scorpio’s leg, and Scorpio flees. Harry manages to track him down, and again demands to know where the girl is. Scorpio invokes his Miranda rights, and Harry stands on the man’s mangled leg until he gives up the information. (Tragically, the girl is already dead).<sup>9</sup>

Harry is clearly in a tight spot. His use of torture shocks the conscience, but the only alternative is to let an innocent child die. Still, while we may feel that the need to save the victim overrides the kidnapper's rights, these rights do not just cease to exist; the kidnapper remains human, and must be treated accordingly. What we mean to imply when we invoke human rights is this: There are limits to how people may be treated. To say that we have rights—any rights—is to acknowledge that there are some means that *cannot be* justified, no matter what ends they serve. The notion of rights implies that there are some things we may not *do* to people—not under any conditions, not with reference to any exceptional circumstances or possible outcome (good or bad).<sup>10</sup>

Unfortunately, the fact that a course of action is not morally available does not guarantee that it will be morally *avoidable*, either. I tend to think, unhappily, that there is no morally acceptable option open to Harry. He must either participate in an atrocity and accept the consequences for that decision or refuse and live with the fact that he failed to take advantage of the one slim chance he had to save the girl. This no-win aspect is the defining characteristic of a moral dilemma. One may feel very strongly that one course of action is preferable to the other, and yet recognize that neither is ultimately right.

Knowing what to do, in such a case, may not always be very hard. Knowing how to judge this decision can be a more lasting difficulty.

#### WHAT SHOULD WE DO WITH HARRY CALLAHAN?

Discussing the Dirty Harry problem, criminologist Carl Klockars has written,

A genuine moral dilemma is a situation from which one cannot emerge innocent no matter what one does—employ a dirty means, employ an insufficiently dirty means, or walk away. In such situations in policing, Dirty Harry problems, the danger lies not in becoming guilty of wrong—that is inevitable—but in thinking that one has found a way to escape a dilemma which is inescapable. Dire consequences result from this misunderstanding. Policemen lose their sense of moral proportion, fail to care, turn cynical, or allow their passionate caring to lead them to employ dirty means too crudely or too readily. The only means of assuring that dirty means will not be



used too readily or too crudely is to punish those who use them and the agency which endorses their use.<sup>11</sup>

Klockars suggests that the authorities should punish Harry exactly as though there were no exceptional circumstances. The advantage of this approach is that it maintains the absolute prohibition on torture. If the prohibition is overridden for some extraordinary reason, those who engage in torture must nevertheless accept that they have committed a fundamental evil and must present themselves for punishment. They cannot claim the right to sacrifice another person or her well-being for the sake of a utilitarian calculus, unless they are also willing to sacrifice themselves or their own interests.

Of course it may feel unfair to send Harry to prison, since that would seem like punishing him for doing the right thing.<sup>12</sup> But even if Harry has done the best thing under the circumstances, it was still a *wrong* thing. The rule still holds and ought to be enforced. If it really is "worth it" to make another writhe in unbearable agony, shouldn't it also be "worth it" to spend some months or years in jail? If "necessity" cannot lead Harry to accept the latter, he ought not accept the former, either.

Nevertheless, Klockars's position does have the unfortunate appearance of a perverse legalism. It seems to suggest that rule-worship always outweighs considerations of the consequences, and specifically that Scorpio's rights are more important than the life of an innocent girl. Such an implication may also, paradoxically, undermine the legitimacy of the general rule, promote skepticism (or even cynicism) about its service to humanity, and erode the disposition of officers to respect it in their decisions.<sup>13</sup> Also, let's remember that we *want* police and soldiers to disobey certain kinds of orders—those demanding atrocities—and to this end it is perhaps unwise to insist too stringently on a standard of unquestioning obedience.

The second approach to the Dirty Harry case would be to, perhaps reluctantly, endorse his decision and pardon the crime. The advantage here is that, under precisely the conditions portrayed in the movie, it is hard to imagine that rote adherence to Miranda qualifies as an exercise in practical wisdom. But the dangers of this approach are serious and, on balance, probably outweigh whatever advantages there may be. Excusing the heroic transgression of moral limits in extraordinary circumstances inevitably sets a precedent for cynical transgressions in circumstances that are perfectly ordinary. More subtly, *excusing* can look an awful lot like *justifying*, meaning that a

pardon may be interpreted to suggest that Harry's abuse was *good*, rather than merely the best (bad) option available to him.

But here's a thought: We may not be able to *justify* Harry's decision, but we can certainly *defend* him in making it. We find something of a precedent for this thinking in the Nuremberg Charter, which held that superior orders did not bear on the question of guilt or innocence, but could be mitigating factors with regard to punishment.<sup>14</sup>

If we accept the principle that coercion reduces culpability, we may by the same reasoning allow for an argument "from necessity." A person can be coerced by direct threats, or by threats against his family, or even by threats against an unrelated hostage. This last case is the interesting one. If you can be coerced (and thus made less culpable) by explicit threats against an innocent third party, then perhaps you can also be coerced by the very knowledge that an innocent party would be imperiled by your failure to act.

This idea, that people can be coerced by circumstances, underlies the argument from necessity. If we believe that such an argument credibly applies to a particular case, we may consider it reasonable to torment a kidnapper to rescue his victim. But such an act cannot, through a calculation of utility, be made just.

This third approach is the one I favor. Following the reasoning of the Nuremberg Tribunal, I would argue that no extraordinary circumstances could erase Harry Callahan's guilt or turn his crime into something else—but they might (probably, would) weigh against serious punishment. Harry, then, ought to be arrested, charged, tried, convicted—and issued a suspended sentence.

While there is no genuine solution for Harry's dilemma, this approach does offer a pragmatic strategy for judging his decision. It manages to avoid the blindness of legal absolutism, yet leaves in place the prohibition on torture and reinforces the idea of accountability for those who violate it. A cop in Harry's position *must* know that, if he determines that torture is necessary, he will have to explain this decision through the legal process and pay the penalty if his judgment is found to be in error. Thus no general license to torture can be derived from any particular case.<sup>15</sup>

We can contrast the Dirty Harry case with a real-world example cited by the Defense Department's Schlesinger Commission:

A 4th Infantry Division battalion commander... permitted his men to beat a detainee whom he had good reason to believe had information about future attacks against his unit. When the beating failed to produce the desired

results, the commander fired his weapon near the detainee's head. The technique was successful and the lives of US servicemen were likely saved. However, his actions clearly violated the Geneva Conventions and he reported his actions knowing he would be prosecuted by the Army. He was punished in moderation and allowed to retire.<sup>16</sup>

This case differs from the standard examples in at least three important respects. First, there is no indication that an attack was imminent. Second, it is presumed that the targets would be soldiers, not civilians. And third, this incident occurred in a context in which coercive questioning was occurring as a standard practice.

The first of these should, on its own, be sufficient to defeat a claim of necessity since other investigative options may have been able to produce the same information.

The second would, at the very least, weaken the necessity defense: soldiers (being, technically, legitimate targets for violence in warfare) have accepted a certain amount of risk and therefore warrant less protection than noncombatants, including captured enemy fighters.

And the third indicates that stricter punishments are called for in the interest of maintaining discipline and deterring future abuse.

The lieutenant in this situation likely felt he was caught in a dilemma similar to that of Dirty Harry. He did, certainly, recognize that he was breaking the rules, but it seems he thought it necessary to save the lives of his troops. I think this claim of necessity fails, but the US Army seems to have been more forgiving. While the unnamed lieutenant was, to his credit, prepared to accept responsibility for what he had done, this case does point to a shortcoming of the Nuremberg-inspired approach. Since it insists that torture is wrong, even if necessary under extraordinary circumstances, it offers little in the way of prescriptive guidance for judging *when* it is necessary. It refuses to offer a license to torture and so cannot detail the criteria for precisely when, or how, the prohibition on torture can be overridden. The presumption is always that the prohibition holds, and the burden is on the individual who violates it.<sup>17</sup>

#### **TORTURE WARRANTS AND THE BANALITY OF EVIL**

But why, some will ask, must such a weighty decision be made ad hoc, in the midst of crisis, and then judged later? And why should the individual soldier, cop, or intelligence agent bear the responsi-

bility for such an important choice? Why not set the evidence before a court and let a judge determine in advance whether or not torture should be used?

This is the position of Alan Dershowitz, a prominent lawyer, scholar, and Harvard Law School professor, who advocates creating a system of "torture warrants" to handle just such cases. Dershowitz has written,

I am against torture as a *normative* matter, and I would like to see its use minimized. I believe that at least moderate forms of nonlethal torture are *in fact* being used by the United States and some of its allies today. I think that if we ever confronted an actual case of imminent mass terrorism that could be prevented by the infliction of torture, we would use torture (even lethal torture) and the public would favor its use. ... If torture is, in fact, being used and/or would, in fact, be used in an actual ticking bomb terrorist case, would it be *normatively* better or worse to have such torture regulated by some kind of warrant, with accountability, recordkeeping, standards and limitations?<sup>18</sup>

He concludes:

My own belief is that a warrant requirement, if properly enforced, would probably reduce the frequency, severity, and duration of torture. I cannot see how it could possibly increase it, since a warrant requirement simply imposes an additional level of prior review.<sup>19</sup>

Dershowitz assumes that because torture does occur, it must occur. And he further assumes that a partial ban can succeed where an absolute prohibition has failed. Historical experience implies the opposite: that any "exception" to the prohibition tends to drift into the justification of torture as a routine practice. Judge Richard Posner has warned,

If rules are promulgated permitting torture in defined circumstances, some officials are bound to want to explore the outer bounds of the rules. Having been regularized, the practice will become regular. Better to leave in place the formal and customary prohibitions, but with the understanding that they will not be enforced in extreme circumstances.<sup>20</sup>

Dershowitz also overestimates the actual level of control that courts exercise through the warrant system. For example, in its first 25 years, the secret court established by the Foreign Intelligence

Surveillance Act authorized about 25,000 wiretaps in cases where there was not probable cause to suspect a crime, but there was a stated national security concern. During the same period the court denied only one such request.<sup>21</sup> Judge Posner adds,

A warrant is issued in an *ex parte* proceeding, and usually the officer seeking the warrant has a choice of judges or magistrates from whom to seek it. So there isn't much actual screening, in most cases. And it is probably inevitable that in national security cases the judicial officers authorized to issue such warrants will be chosen in part for their sensitivity to security concerns. Moreover, the warrants and the affidavits supporting them, as well as the judges' reasons for granting the warrant, would be likely to remain secret. The requirement of a warrant would no doubt make the officers seeking them a little more careful, but perhaps not much more truthful or candid.<sup>22</sup>

The "torture warrant" approach suggests a sort of judicial fetish: What is important, in the mind of Alan Dershowitz, is not the substantive question of whether such methods can ever be *justified*, but the procedural matter of whether they have been *authorized*. William Schulz, the executive director of Amnesty International USA, makes the rather obvious point that human rights abuses do not become more acceptable just because they have been approved in advance. He asks if Dershowitz would use the same reasoning to advocate "brutality warrants" and "prisoner rape warrants"?

Dershowitz answers Schulz with "a heuristic yes, if requiring a warrant would subject these horribly brutal activities to judicial control and accountability." He then adds, "My question back to Schulz is, do you prefer the current situation in which brutality ... and prisoner rape are rampant, but we close our eyes to these evils?"<sup>23</sup>

This is the sort of argument that gives lawyers a bad name. It can only be disingenuous to imply that Amnesty International—a Nobel Prize-winning human rights organization—encourages people to ignore human rights abuses. Moreover, this exchange puts the lie to Dershowitz's insistence elsewhere that a warrant requirement would strictly limit the use of torture to ticking time bomb cases; without a blush Dershowitz admits that the same reasoning would also allow the authorization of non-interrogational torture—in the name of reducing it, of course. It is rather absurd to assume that the only options available are ignoring torture when it occurs or authorizing it in hopes that it may occur somewhat less often. And furthermore, one wonders what force this judicial authoriza-



tion is meant to have, when it is premised on the idea that torture inevitably occurs whether or not the courts approve.

What may be worse, Dershowitz's plan might actually reduce accountability at the lowest ranks. A warrant system would introduce a new category of "legal torture," and would thus undercut the sense of manifest illegality that currently adheres to all such practices. This shift would confuse the standards according to which we hold soldiers responsible for recognizing—and resisting—illegal orders.

#### AUTHORITY AND CONSCIENCE, DECENCY AND DUTY

Posner has argued that a warrant requirement would not actually reduce the use of torture, and Schulz has pointed out that it would do nothing to make such practices legitimate. Political philosopher Jean Bethke Elshtain also disapproves of Dershowitz's proposal, calling torture warrants "a stunningly bad idea," since they would sanction torture and thereby preserve the good conscience of those who use it.<sup>24</sup>

A certain asceticism is required of those who may be required, in a dangerous and extreme situation, to temporarily override a general prohibition. They should not seek to legalize it. They should not aim to normalize it. And they should not write elaborate justifications for it, as if there were a tick-list one can do down and, if a sufficient number of ticks appears, one is given leave to torture. The tabooed and forbidden, the extreme, nature of this mode of physical coercion must be preserved so that it never becomes routinized as just the way we do things around here.<sup>25</sup>

I asked in a previous chapter, what sort of person needs a rule to tell him that he ought not stub his cigarette out on the arm of a shackled woman, or press his thumbs into her eyes, or threaten her with rape? But there is a further question to consider: if you *do* need such a rule to tell you not to abuse those in your power, is the rule likely to stop you?

In civilian life, only a psychopath would need to refer to a written rule in order to recognize these atrocities as the crimes that they are. But in fulfilling one's official duties, things look somewhat different. One is more likely to be presented with the opportunity and sometimes very powerful reasons (even moral reasons) to engage

in such abuse. But moreover, our very conception of authority helps make it possible for people to suspend their usual moral sense—especially in times of war when soldiers defer their most important judgments to the military command and are commonly ordered to do exactly the sort of things forbidden in civilian life.

As the Milgram experiments show, the impulse to obey authority can be very strong. But being *given* authority can have similar morally numbing effects. Philosopher Thomas Nagel cites three reasons why authority makes it easy to forget about ethical limits:

First, restrictions against the use of public power for private gain can seem like a moral cushion that insulates whatever else is done officially from moral reproach.

Second, the fact that the holder of a public office takes on an obligation to a particular group may foster the idea that he is obliged not to consider anything except the interest of that group.

Third, the impersonal morality of public institutions, and the moral specialization that inevitably arises given the complexity of public actions, leads naturally to the establishment of many roles whose terms of reference are primarily consequentialist. Lack of attention to the context that is necessary to make these roles legitimate can lead to a rejection of all limits on the means thought to be justified by even greater ends.<sup>26</sup>

This analysis helps to illustrate the importance of rules like those forbidding torture. When faced with an order to commit atrocities, the conscientious official may feel himself trapped between his personal moral sense and his professional duty. The rules of war help to resolve this dilemma by lending institutional legitimacy to his resistance or refusal. They put him in a position where he can refuse to commit war crimes, not simply because they offend his sense of decency, but also because they are contrary to his official duties as he sees them.

Of course the rules on their own do little to restrain those who are not so scrupulous. As the Stanford Prison Experiment suggests, where other constraints are lacking, the conditions of authority not only offer opportunities for corruption but may inevitably promote the disposition to take advantage of these opportunities. Power becomes the motive of abuse, as well as the means. Power creates the opportunities and then creates the sadists who exploit them.

As one senior Pentagon consultant remarked, "When you live in a world of gray zones, you have to have very clear red lines."<sup>27</sup>

#### WHO DO YOU TRUST TO USE TORTURE?

There are practical, as well as ethical, reasons to resist the legitimization of torture—namely, the gap between what can be defended in the abstract and what we trust the government to actually do.

It is one thing to construct hypotheticals in which torture is defensible. But it is something else altogether to trust the state (and its all-too-human functionaries) to use its discretion with the utmost caution, to limit itself to those instances where exceptional circumstances truly do overwhelm the usual rule. It is not the nature of power to accept such restrictions willingly, and the promise to do so rarely survives the test of reality.<sup>28</sup> A regime of rights, for this reason, ought to be somewhat overprotective. Our rights should apply in the extreme circumstances, so that they may be preserved for more normal times. Ground that we lose in a crisis may be hard to recover.

Hence, even if we accept that under certain hypothetical ticking time bomb conditions torture might be the best option available, it does not immediately follow that we would want the state to use it.

We may determine that, in certain extreme cases, torture is morally defensible—and still think, for practical, real-world, political reasons, that the absolute prohibition on torture should stand.<sup>29</sup> Most of us simply don't trust the state to do everything that may be ethically permissible. For instance, I think a plausible case can be made to justify censorship, yet there is nobody that I would trust with this power. To conservatives, I would ask: if you don't trust the government to run a health-care system, why would you trust it to use torture?

It is also worth considering some of the other things a society commits itself to by institutionalizing torture. It must have suitable detention facilities, proper equipment, and trained personnel. This means it must arrange for such training, and propagate rules governing the techniques to be used and the circumstances under which they may be applied. Handbooks must be written, printed, and kept up to date. Supervision and record keeping are required for accountability. In short, a whole bureaucratic apparatus must be built and maintained.<sup>30</sup>

Once in place, this system will develop its own interests and set forth its own demands. By the logic of bureaucracy it follows that, even if the institution is only meant for emergencies, it must demonstrate its utility and justify the investment it represents. In other words, to persist it must be used.

Torture, once authorized and embodied in an institution, almost inevitably becomes a standard procedure. We've seen this happen, in a small way, in the transfer of practices from Guantánamo and Afghanistan to Iraq, and especially, to Abu Ghraib. We can see similar processes at work on a larger scale, if we broaden our view to consider the War on Terror in the context of America's larger geopolitical ambitions.

## NOTES

<sup>1</sup> Jay S. Bybee, "Memorandum for Alberto Gonzales, Counsel to the President, Re: Standards of Conduct for Interrogation Under 18 USC [sections] 2340–2340A" (August 1, 2002) in *Torture and Truth: America, Abu Ghraib, and the War on Terror*, by Mark Danner (New York: New York Review Books, 2004), 150–151.

Such reasoning, of course, is quite old. Nineteenth-century utilitarian philosopher Jeremy Bentham wrote: "Suppose an occasion were to arise in which a suspicion is entertained, as strong as that which would be received as a sufficient ground for arrest and commitment as for [a] felony—a suspicion that at this very time a considerable number of individuals are actually suffering, by illegal violence inflicting [pains] equal in intensity to those which if inflicted by the hand of justice, would universally be spoken of under the name of torture. For the purpose of rescuing from torture these hundred innocents, should any scruple be made of applying equal or superior torture, to extract the requisite information from the mouth of one criminal, who having it in his power to make known the place where at this time the enormity was practicing or about to be practiced, should refuse to do so? To say nothing of the wisdom, could any pretense be made so much as to the praise of blind and vulgar humanity, by the man who to save one criminal, should determine to abandon 100 innocent persons to the same fate?" Quoted in Alan Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (New Haven, CT: Yale University Press, 2002), 142–143.

<sup>2</sup> For a concise survey of the relevant philosophical positions, see Eyal Press, "In Torture We Trust?" in *Civil Liberties Vs. National Security in a Post-9/11 World*, ed. Katherine B. Darmer et al. (Amherst, NY: Prometheus Books, 2004).

For a consideration of the legal implications of the ethical arguments, see John T. Parry and Welsh S. White, "Interrogating Suspected Terrorists: Should Torture Be an Option?" in Darmer et al., *Civil Liberties Vs. National Security*.

- <sup>3</sup> Henry Shue, "Torture," *Philosophy and Public Affairs* 7, no. 2 (1978): 141–142. Emphasis in original.
- <sup>4</sup> David Rose, *Guantánamo: The War on Human Rights* (New York: New Press, 2004), 146. Later French authorities had no such qualms about brutality.
- <sup>5</sup> Chris Mackey and Greg Miller, *The Interrogators: Inside the Secret War Against Al Qaeda* (New York: Little, Brown and Company, 2004), xxvii.
- <sup>6</sup> Quoted in Mark Bowden, "The Dark Art of Interrogation," *Atlantic Monthly* (October 2003), 76.
- <sup>7</sup> Dershowitz, *Why Terrorism Works*, 147.
- <sup>8</sup> "Knight in dirty armor" is Frank Miller's term. Quoted in Milo George, ed., *Comics Journal Library, Volume Two: Frank Miller* (Seattle: Fantagraphics Books, 2003), 83.

Miller has made a career out of writing about such characters, first in comics (most famously with his recasting of Batman in *The Dark Knight Returns* (New York: DC Comics, 1986) and more recently in the ultraviolent noir film *Sin City* (2005). Miller used the phrase in reference to Philip Marlowe, but the Western canon is replete with such figures—from Agammemnon to the High Plains Drifter. Such heroes are almost always male, and usually white. (But not always: See Denzel Washington's performance in the 2004 film *Man on Fire*. See also Stan Goff's critique of that film: Stan Goff, "Military Matters #28—Torture and Cinema: Man on Fire," November 23, 2004, <http://www.freedomroad.org/content/view/307/69/> [accessed August 5, 2005].)

- <sup>9</sup> *Dirty Harry*, directed by Don Siegel (Warner Brothers, 1971). While Harry Callahan is clearly a figment of the Hollywood imagination, the situation he faced is not as far-fetched as one might think: In September 2002, a law student in Frankfurt, Germany, kidnapped an 11-year-old boy. The kidnapper covered the boy's nose and mouth with duct tape, wrapped him in plastic sheeting, and hid him in the woods. Police arrested the perpetrator when he tried to pick up the ransom money, but he refused to talk. Detectives then told him that they were bringing in a specialist to torture him, and he revealed at once where to find the child. As in the movie, the victim was dead. Bowden, "The Dark Art of Interrogation," 70.

Italian authorities weighed their options differently. In 1978, the prime minister, Aldo Moro, was kidnapped, and an investigator working on the case recommended that one suspect be tortured. General Carlo Della Chiesa replied: "Italy can survive the loss of Aldo Moro, but



it cannot survive the introduction of torture." Moro was killed. Quoted in Dershowitz, *Why Terrorism Works*, 134.

- <sup>10</sup> As Thomas Nagel explains, "If it is not allowable to *do* certain things, such as killing unarmed prisoners or civilians, then no argument about what will happen if one does not do them can show that doing them would be all right. ... Even if certain types of dirty tricks become acceptable when the stakes are high enough, the most serious of the prohibited acts, like murder and torture, are not just supposed to require unusually strong justification. They are supposed *never* to be done, because no quantity of resulting benefit is thought capable of *justifying* such treatment of a person." Thomas Nagel, "War and Massacre," in *War and Moral Responsibility*, eds. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton, NJ: Princeton University Press, 1974), 8, 22–23. Emphasis in original.
- <sup>11</sup> Carl B. Klockars, "The Dirty Harry Problem," in *Thinking About Police: Contemporary Readings*, ed. Carl B. Klockars and Stephen D. Mastrofski (New York: McGraw-Hill, 1991), 413.
- <sup>12</sup> There are likely other—ultimately, political—factors informing this intuition. For example, one might be less forgiving of similar actions undertaken by vigilantes rather than by an agent of the state. Likewise, it may matter *which* state the agent represents; the same story may take on a shockingly different character if set in Fascist Italy or Apartheid South Africa. These attitudes deserve more scrutiny than they can properly be given here, but it is worth remembering the distance between the idealized movie version of the hero cop, and the unsavory reality of police violence. Real-world torture is not, typically, a desperate measure undertaken to extort the truth from murderous psychopaths, but a banal and sordid exercise of power whose usual targets are people who have few resources with which to defend themselves—particularly, the poor and people of color. This fact is suppressed by both the Hollywood story and the philosopher's fable, but it is only too apparent in the contemporary and historical cases discussed elsewhere in this book.
- <sup>13</sup> This is one reading of the movie's ambiguous ending. After killing Scorpio in a dramatic shoot-out, Harry throws away his badge. Is he rejecting the framework of legality that has repeatedly backed him into ethical corners? Or does he feel that he has become so compromised that he is no longer suitable to enforce the law? Or has he, finally, just seen enough killing?
- <sup>14</sup> Nuremberg is discussed in more detail in Chapter 1.
- <sup>15</sup> All the options discussed here assume that the torture is known to the authorities. (In the movie it is. Harry reports it himself.) This feature of the example is crucially important. While there may be debatable cases about whether torture is the best (bad) option under the circumstances,

there can be no justification for, and no mitigating of punishment for, covering it up when such a decision has been reached. Those who fail to report abuse ought to be punished regardless of the eventual verdict concerning the torture itself. An officer with confidence enough in his own judgment to instigate torture ought also to have the confidence to report it, argue his case, and take responsibility for his decision. Of course, in the real world such self-reporting is exceedingly rare—which may say something about how seriously we should take the rationalizations offered to justify torture when it occurs.

Also, note that this entire meditation leaves aside very important questions about the reliability of the *other* authorities, including the courts. If the mechanisms of accountability are not operating as they ought—if they are too forgiving of official abuses, for example—then self-reporting is merely a formality and the question of punishment is only academic. There are, unfortunately, good reasons to believe that such is the state of affairs within the US government; witness the lenient treatment of those convicted of abuse, with the notable exception of a few high-profile Abu Ghraib cases.

- <sup>16</sup> [James R. Schlesinger, chair], "Final Report of the Independent Panel to Review DoD Operations (The Schlesinger Report)" (August 2004), in Danner, *Torture and Truth*, 401.
- <sup>17</sup> This is as it must be. The Israeli Supreme Court explains: "In the Court's opinion, a general authority to establish directives respecting the use of physical means during the course of a GSS [General Security Services] interrogation cannot be implied from the 'necessity' defense. ... This defense deals with deciding those cases involving an individual reacting to a given set of facts; it is an ad hoc endeavor, in reacting to an event. It is the result of an improvisation given the unpredictable character of the events. Thus, the very nature of the defense does not allow it to serve as the source of a general administrative power." Supreme Court of Israel, "Judgment Concerning the Legality of the General Security Service's Interrogation Methods (September 6, 1999)" in Levinson, *Torture: A Collection*, 178–179.
- <sup>18</sup> Alan Dershowitz, "Tortured Reasoning," in Levinson, *Torture: A Collection*, 266.
- <sup>19</sup> *Ibid.*, 270.
- <sup>20</sup> Richard A. Posner, "Torture, Terrorism, and Interrogation," in Levinson, *Torture: A Collection*, 296.
- <sup>21</sup> Elaine Scarry, "Five Errors in the Reasoning of Alan Dershowitz," in Levinson, *Torture: A Collection*, 287.
- <sup>22</sup> Posner, "Torture, Terrorism, and Interrogation," 296.
- <sup>23</sup> Dershowitz, "Tortured Reasoning," 266–267.

- <sup>24</sup> Jean Bethke Elshtain, "Reflection on the Problem of 'Dirty Hands,'" in Levinson, *Torture: A Collection*, 83.
- <sup>25</sup> Elshtain, "Reflection on the Problem of 'Dirty Hands,'" 84.
- <sup>26</sup> Thomas Nagel, "Ruthlessness in Public Life," in *Mortal Questions* (Cambridge: Cambridge University Press, 1979), 89–90. Paragraph breaks added.
- <sup>27</sup> Quoted in Seymour M. Hersh, *Chain of Command: The Road From 9/11 to Abu Ghraib* (New York: HarperCollins, 2004), 72.
- <sup>28</sup> Philip Heymann points to one reason why this is so: "The costs of errors are born by the suspect tortured, not by those who decide to torture him." Philip B. Heymann, "Torture Should Not Be Authorized," in Darmer et al., *Civil Liberties Vs. National Security*.
- <sup>29</sup> As it happens, this argument is compatible with rule-based utilitarianism. W. L. Twining and P. E. Twining have written: "The circumstances are so extreme in which most of us would be prepared to justify resort to torture, if at all, the conditions we would impose would be so stringent, the practical problems of devising and enforcing adequate safeguards so difficult and the risks of abuse so great that it would be unwise and dangerous to entrust any government, however enlightened, with such a power. Even an out-and-out utilitarian can support an absolute prohibition against institutionalized torture on the ground that no government in the world can be trusted not to abuse the power and to satisfy in practice the conditions he would impose." Quoted in Dershowitz, *Why Terrorism Works*, 145.
- <sup>30</sup> As the other chapters make clear, the US already has such apparatuses at work both domestically and abroad. Of the features listed here, only record keeping is arguably absent from the US system.

## CHAPTER 4

# TORTURE AND EMPIRE

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WE HAVE SEEN, IN the last few years, direct evidence demonstrating the inherent dangers of authorizing torture. Efforts to distinguish “cruel, inhuman, and degrading” treatment from “torture” proper, and rules limiting brutality to specific geographic areas, or specially authorized units, or particular kinds of adversaries, have only served to blur the line between permitted and prohibited techniques.

The evidence, as it appears in legal documents and military records, absolutely defeats the comforting notion that the grotesque abuses at Abu Ghraib were the work of a handful of self-motivated sadists. As Jackson Diehl wrote in the *Washington Post*,

The causal chain is all there: from Bush’s February 2002 decision to Rumsfeld’s December 2002 authorization of nudity, stress positions and dogs; to the adopting of these methods in Afghanistan and their sanction in Iraq by a commander looking back to Bush’s decision; and finally, to their use on detainees by soldiers who reasonably believed they were executing official policy.<sup>1</sup>

Yet as much as the migration theory has going for it, it is not the whole story. Simply fitting Abu Ghraib into the narrative of the War on Terror is too narrow an approach. It takes as an unstated premise the idea that, as former CIA antiterrorism expert Cofer Black told Congress, “there was a ‘before 9/11’ and there was an ‘after 9/11.’ After 9/11, the gloves came off.”<sup>2</sup>

Here we see a key assumption emerge, namely that the lawlessness of the Bush administration is unique and that it (like so much else) is the product of the terrorist attacks of September 11, 2001. What this perspective ignores, however, is the history of previous American lawlessness and our government’s use of torture well before the Twin Towers fell.

George W. Bush’s suspension of the Geneva Conventions, as significant as it was, was not unprecedented: His father also proclaimed that the Conventions did not apply to the 1989 invasion of Panama (though their standards remained in force as a matter of policy).<sup>3</sup> That engagement, dubbed “Operation Just Cause”

by American war planners, killed approximately 4,000 people, ostensibly to capture a single drug trafficker. Ten of the 15 members of the UN Security Council voted to declare the US in violation of international law.<sup>4</sup>

Likewise, the younger Bush's policy of unilateral, preemptive warfare is simply one iteration of a long-standing, bipartisan consensus. The position of the Clinton administration, as Secretary of State Madeline Albright presented it to the UN, was that the United States would act "multilaterally when possible, but unilaterally when necessary." Clinton himself clarified this stance, with specific reference to Iraq: "the United States and hopefully all of our allies would have the unilateral right to respond at a time, place, and manner of our own choosing."<sup>5</sup> In other words, the "unilateral right" to attack belongs to the United States, and "all of our allies" will come along if they know what's good for them. When a 1998 UN resolution pointedly omitted any authorization to use force against Iraq, State Department spokesmen James Rubin explained, "I am not saying that we don't care about that resolution ... [but] we've made clear that we don't see the need to return to the Security Council if there is a violation of the agreement."<sup>6</sup>

### IRAQ IN CONTEXT

Imperialism is not new to the American experience. Bush's pursuit of global dominance comes as the culmination of a process begun when the European powers colonized this continent and undertook the systematic extermination of indigenous Americans.

Since national independence, the US imperial project has progressed through several stages. The 1823 Monroe Doctrine declared all of the Americas as our country's exclusive sphere of influence, warning that "any interposition ... by any European power" would be seen "as the manifestation of an unfriendly disposition toward the United States."<sup>7</sup> After World War II, President Harry S. Truman expanded this principle, promising to "help free peoples who are resisting attempted subjugation by armed minorities or by outside pressures."<sup>8</sup> Again, the US was exempt from its own standards of non-intervention: The Truman Doctrine was intended to justify \$400 million in aid to prop up right-wing governments in Greece and Turkey; the US itself was the most powerful "outside pressure" in the conflict.<sup>9</sup>

The rate of overt aggression has accelerated markedly in recent years, punctuated by three major historical moments—the election



of Ronald Reagan in 1980, after which it was again politically acceptable for our government to go on the offensive; the end of the cold war and the fall of the Soviet Union, which removed the single most important counterbalancing force in terms of global politics; and the terrorist attacks of September 11, 2001, which severely muted domestic dissent and provided a passable rationale both for the consolidation of power in the executive branch and for aggressive, unilateral action overseas.

The influence of these events can be seen clearly in the recent history of US involvement in Iraq—the overt military support for the Ba’athist regime (paired, interestingly, with covert support of Iran) in the Iran-Iraq war of the 1980s; the US-led but UN-backed bombing campaign of 1991, followed by a decade of siege-enforced “sanctions”; and the 2003 American invasion and subsequent occupation.

It is usual to speak of two Gulf Wars, roughly ten years apart. In actuality, what we’ve seen is one continuous war in four stages. The first stage was a brief period of high-intensity bombing aimed at forcing Iraq to withdraw from Kuwait and deliberately destroying most of the country’s infrastructure—producing what one UN inspection team called a “near apocalyptic effect.”<sup>10</sup> The second was a siege lasting more than a decade in which the leverage for negotiation (if it could be called that) was America’s ability to deny the Iraqi population the basic necessities of life—including food, medicine, and drinking water. The UN estimated that, by 1995, 567,000 children had died as a result of the sanctions. The following year, it estimated that 4,500 children were dying *every month*.<sup>11</sup> Third came the straightforward invasion of 2003, which toppled the Ba’athist government. And fourth, the current occupation and ongoing counter-insurgency effort.

Viewed this way, we have not two wars but one. Not a sudden shift toward aggression, but the consequence of a process long underway. Not Democratic diplomacy and Republican belligerence, but a bipartisan imperial endeavor.

The official reasons for the war need not concern us. And the debate about alternative explanations—George W. Bush’s personal vendetta against Saddam Hussein, the need for the US to flex some muscle after September 11, Iraq’s strategic position in the Middle East, the justification for increased military spending, and of course, the oil—is only slightly more relevant to the present discussion. It is easy enough to discern whose interests are served as America throws its weight around overseas. And I am less interested, here, in the economic incentives and policy options leading into this con-

flict, than I am in the overall shape of American power. I am thus less worried about the aims of war than about its lasting effects—especially the systems of power that are expanded and solidified in the course of conquest.

Torture and empire are not merely means or ends but *types* of power, and types of power well suited to working together. Torture is the technique of empire; empire, the ideological framework and political infrastructure of torture. They are micropower and superpower respectively. Torture expresses, or perhaps establishes, the sovereign's claim over the subject. Empire extends that claim, in principle, over the entire globe. The meaning of each relies on the other.

#### **LIBERATION: A SNIPER'S VIEW**

In November 2005, the US Army Third Infantry made international headlines after raiding an Iraqi Interior Ministry building and uncovering a secret torture chamber. The prisoners there said that Iraqi guards had submerged them in cold water and shocked them with electricity, beat them with sticks and cables, and peeled away layers of their skin.<sup>12</sup> Prime minister Ibrahim Jafari confirmed, "There were 173 detainees held at an Interior Ministry prison and they appeared to be malnourished. There is also some talk that they were subjected to some kind of torture."<sup>13</sup> Soon after, the United States opened a wide-ranging investigation into all 1,100 Iraqi-controlled detention facilities.<sup>14</sup>

In contrast, a similar raid a year and a half before received remarkably less media attention: When a US sniper saw men in plain clothes beating prisoners in the walled yard of an Interior Ministry building in east Baghdad, he immediately radioed for help. After waiting several minutes, he called again and said that if someone didn't intervene at once, he would take direct action, firing at the assailants.<sup>15</sup> Responding to his call, a unit of the Oregon National Guard raided the compound. There they found dozens of prisoners, who told of being beaten and kept in the sun for three days without food or water. In a nearby building, the soldiers discovered torture kits, including metal rods, rubber hoses, electrical wires, and chemicals. Captain Jarrell Southall told the *Oregonian*, "Many of these prisoners had bruises and cuts and belt or hose marks all over. ... I witnessed prisoners who were barely able to walk." While the soldiers disarmed the jailers and administered first aid to the victims, Lieutenant Colonel Daniel Hendrickson, the highest-ranking officer

at the scene, called for instructions. The orders that came back were unequivocal: return the prisoners to Iraqi custody and withdraw.<sup>16</sup>

The decision to abandon the prisoners may seem hard to understand. It directly contradicts the Bush administration's stated goals for a new democratic Iraq. It violates the Geneva Conventions' articulation of the responsibilities of an occupying force. And it clearly frustrated the soldiers themselves. But, more than the much-publicized investigation into Iraqi-run jails the following year, the withdrawal was in keeping with the overall pattern of US-Iraqi collaboration.

For instance, consider the fate of Major General Abed Hamed Mawhoush, former head of the Iraqi air defenses. Mawhoush was captured in October 2003 and a month later was reported dead at al-Qaim, a victim of "asphyxia due to smothering and chest compression." The autopsy cited "evidence of blunt trauma to the chest and legs." A Defense Department investigation determined that "two soldiers with the 66<sup>th</sup> Military Intelligence Company slid a sleeping bag over his body, except for his feet, and began questioning him as they rolled him repeatedly from his back to his stomach. ... Then one of the soldiers, an interrogator, sat on Mawhoush's chest and placed his hands over the prisoner's mouth."<sup>17</sup>

As it happens, Mawhoush was already in bad shape before being stuffed into that sleeping bag. Earlier during his stay at the "Blacksmith Hotel" military jail, Mawhoush had been forced into stress positions in a display before the entire inmate population. Then, two days before his death, on November 24, 2003, a CIA-sponsored Iraqi paramilitary group had beaten him with fists, clubs, and rubber hoses. These paramilitary units—code-named "Scorpions"—regularly questioned those prisoners whom US interrogators failed to break. It seems, though, that their real utility lay not in their interrogation skills, but in their ability to terrorize the prisoners. As one soldier explained, "Detainees knew that if they went to those people, bad things would happen. ... It was used as a motivator to get them to talk. They didn't want to go with the masked men."<sup>18</sup>

More recently, in July 2005, a company of the California National Guard was placed on restricted duty after five of its members were accused of abusing prisoners—in one case, using a stun gun—and six others were charged with dereliction of duty. The unit in question was responsible for training and conducting operations with the "Wolf Brigade"—an Iraqi Special Forces unit with a reputation for beating prisoners during questioning.<sup>19</sup>

This record shows us something of the *realpolitik* underlying the US approach to human rights. In 2004, under pressure to demonstrate the reality of “Iraqi sovereignty,” the US authorities were unwilling to discipline their local quislings. Fifteen months later, the political equation was different: With Iraq’s parliamentary elections around the corner and support for the war waning in the US, the occupying powers had some very strong reasons for halting the Interior Ministry’s abuses. Rumors of the secret prison had been circulating since summer, along with reports of massacres by government-supported Shiite militias.<sup>20</sup> If the Sunni population felt that the government and their American patrons were tolerating such abuses, ethnic tensions would be exacerbated and the potential for election-day violence increased.<sup>21</sup> Since the Bush administration was counting on the elections to legitimize their policies and bolster support at home, it had little choice but to respond to Sunni complaints and make a show of its commitment to human rights and democracy. The press obediently gave the story broad circulation, with little attention to the earlier atrocities.

#### FRIENDLY GOVERNMENTS, EXTRAORDINARY RENDITIONS

The illusion of Iraqi sovereignty under US occupation may be uniquely unconvincing, but their government is not the only foreign power ready to use torture on behalf of the United States. Increasingly since September 11, 2001, the US has taken advantage of the generosity of other regimes, regimes with well-deserved reputations for brutality. According to Najeeb Nuaimi, a former justice minister of Qatar, “The number of people who have been detained in the Arab world for the sake of America is much more than in Guantánamo Bay. Really, thousands.”<sup>22</sup> A Saudi official confirms that his own government is holding about 800 terrorism suspects. While only one or two of these were taken into custody at the direct request of the US, the US government does supply questions for the others and sometimes observes interrogations.<sup>23</sup>

Some terror suspects are arrested in their home countries at the request of US officials. Others are illegally apprehended—in a word, kidnapped—wherever they happen to be and flown to countries willing to employ harsh methods. The most common destinations are Egypt, Morocco, Syria, and Jordan.<sup>24</sup> The Saudi official explains the advantage of this system: “[The Jordanians] can do anything they want with them, and the US can say, ‘We don’t have them.’”<sup>25</sup> The preferred euphemism for this sort of torture-by-proxy is “extraordinary rendition.”



The extraordinary rendition program began in 1995, under President Clinton. At first it specifically targeted people named in foreign arrest warrants.<sup>26</sup> Recently, however, it has been expanded to anyone the US designates an "illegal combatant"—in other words, anyone the Bush administration wants to push outside the protection of the law. Pulitzer Prize-winning historian Herbert Bix comments: "this type of contract crime may be ordered mainly for reasons of deterrence—i.e., to teach an object lesson to all people who fall afoul of the US regardless of their national origin."<sup>27</sup>

For example, Maher Arar, a Syrian-born Canadian citizen, was on his way home from vacation in 2002 when he was arrested in New York City's JFK airport. Though the State Department cites Syria as a country that commonly employs torture, the authorities had him transferred there without any judicial hearing. Arar spent the next ten months in a Syrian prison, where he says he was kept in a windowless underground cell resembling a grave. There he was repeatedly whipped with electric cables and threatened with shocks.<sup>28</sup> Eventually, he just confessed to whatever accusations they made. "You just give up," he said. "You become like an animal." In October 2003, Arar was released without charges. He's now suing the US government. "They are outsourcing torture because they know it's illegal," he says.<sup>29</sup>

Officially, sending someone abroad to be tortured *is* illegal.

In 1998 Congress passed legislation establishing it as

the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.<sup>30</sup>

Nevertheless, legal scholars (such as NYU's Scott Horton) estimate that there have been 150 renditions since September 11, 2001.<sup>31</sup>

#### **"INTENTIONALLY MISLEADING": THE CASE FOR WAR**

According to former CIA agent Robert Baer,

There is a rule inside the CIA that if you want a good interrogation and you want good information you send the suspect to Jordan, if you want them to be killed



or tortured to death you send them either to Egypt or Syria—never see them again.<sup>32</sup>

The CIA would have done well to keep this rule in mind in the case of suspected al-Qaeda trainer Ibn al-Shaikh al-Libi. Al-Libi was arrested by Pakistani authorities in the winter of 2001–2002 and was promptly turned over to the United States. The FBI and CIA clashed over his custody, a battle the CIA won thanks to White House intervention. According to a former FBI agent, “They duct-taped his mouth, cinched him up and sent him to Cairo.”<sup>33</sup>

Al-Libi seems to be the main source for Bush’s claim, in an October 7, 2002 speech, that “Iraq has trained al Qaeda members in bomb-making and poisons and deadly gases.”<sup>34</sup> Secretary of State Colin Powell reiterated the allegation in his February 2003 speech before the UN Security Council.<sup>35</sup> But in January 2004 al-Libi recanted, and the CIA was forced to disavow its earlier reports.<sup>36</sup>

According to former FBI counterterrorism expert Dan Coleman, the Iraq connection was never credible and should not have been believed:

It was ridiculous for interrogators to think that [al-] Libi would have known anything about Iraq. ... He ran a training camp. He wouldn’t have had anything to do with Iraq. Administration officials were always pushing us to come up with links, but there weren’t any. The reason they got bad information is that they beat it out of him. You never get good information from someone that way.<sup>37</sup>

In fact, recently declassified documents show that intelligence analysts discredited al-Libi’s claim well before the President’s speech. In February 2002, the DIA reported its reservations to the National Security Council, noting that al-Libi could not name any Iraqis involved in the training program or any of the specific weapons covered in the curriculum. The DIA concluded that “it is more likely this individual is intentionally misleading the debriefers.”<sup>38</sup>

#### BLACK SITES AND GHOST DETAINEES

When the extraordinary rendition program was first implemented, all the prisoners sent to other countries were put under the authority of the government in those countries. But after 9/11, that changed, with the US often taking a more direct hand in their treatment. Coleman explains: “Now, instead of just sending people to third countries, we’re holding them ourselves. We’re taking them in

our own custody in third countries." He worries that this effectively puts them outside of any legal system and allows for no due process. "What's our process?" he asks. "We have no method over there other than our laws—and we've decided to ignore them. What are we now, the Huns? If you don't talk to us, we'll kill you?"<sup>39</sup>

Human Rights Watch notes:

The most sensitive and high-profile terrorism suspects have been detained by the United States in "undisclosed locations," presumably outside the United States, with no access to the ICRC, no notification to families, no oversight of any sort of their treatment, and in many cases no acknowledgment that they are even being held.<sup>40</sup>

As far as their families are concerned, these people have simply vanished.

For example, on New Year's Eve 2003, German citizen Khaled El-Masri was detained at the border of Macedonia because his name resembled that of a wanted terrorist. The Macedonian police notified the CIA, and the director of the CIA Counter-Terrorism Center's al-Qaeda unit ordered him rendered (over the objections of lower-ranking, but more experienced, agents).<sup>41</sup> El-Masri wrote in the *LA Times* about what happened next:

I was handcuffed, blindfolded and taken to a building where I was severely beaten. My clothes were sliced from my body with a knife or scissors, and my underwear was forcibly removed. I was thrown to the floor, my hands pulled behind me, a boot placed on my back. I was humiliated.

Eventually my blindfold was removed, and I saw men dressed in black, wearing black ski masks. I did not know their nationality. I was put in a diaper, a belt with chains to my wrists and ankles, earmuffs, eye pads, a blindfold and a hood. I was thrown into a plane, and my legs and arms were spread-eagled and secured to the floor. I felt two injections and became nearly unconscious. I felt the plane take off, land and take off. I learned later that I had been taken to Afghanistan.

There, I was beaten again and left in a small, dirty, cold concrete cell. I was extremely thirsty, but there was only a bottle of putrid water in the cell. I was refused fresh water.

That first night I was taken to an interrogation room where I saw men dressed in the same black clothing and ski masks as before. They stripped and photographed

me, and took blood and urine samples. I was returned to the cell, where I would remain in solitary confinement for more than four months.<sup>42</sup>

During his detention El-Masri was questioned repeatedly about the September 11 attacks, about Afghan training camps, and about his associates in Germany, but he stubbornly insisted that he knew nothing about terrorism. One interrogator told him: "You are here in a country where no one knows about you, in a country where there is no law. If you die, we will bury you, and no one will know." Meanwhile, the CTC's Office of Technical Services analyzed his passport and determined that it was legitimate. El-Masri was released in Albania in May 2004, and US ambassador Daniel R. Coates notified the German minister of the interior, Otto Schily, that the CIA had mistakenly imprisoned a German citizen. El-Masri's wife, in the meantime, had relocated their family to Lebanon, assuming that her husband had abandoned them.<sup>43</sup>

In November 2005, unnamed intelligence officials told the *Washington Post* that approximately 100 suspected terrorists had been put into the secret system, not counting prisoners captured in Iraq. Of these, more than 70 were eventually rendered to other countries; the rest are kept completely isolated in dark cells, sometimes underground. Their only contact is with their CIA captors.<sup>44</sup>

The CIA officially acknowledges holding two or three dozen prisoners around the world but has only identified a few and will not say where they are. Even the four leaders of the House and Senate Intelligence Committees don't know for sure.<sup>45</sup> But reliable reports indicate that the US has maintained secret detention facilities in Jordan, Afghanistan, Pakistan, Egypt, Thailand, Poland, Romania, and on the island of Diego Garcia.<sup>46</sup> By running these "black sites" in secret and off-shore, the CIA limits public scrutiny, as well as any sense of congressional or judicial oversight.<sup>47</sup> It simultaneously extends its power into the territory of other states—sometimes with their cooperation, sometimes over their objections<sup>48</sup>—and preserves the clear conscience and "freedom-loving" self-image of its own citizens.

One of the al-Qaeda leaders whom the US confirms having in custody is Khalid Shaikh Mohammed, the alleged mastermind behind the September 11 attacks. Mohammed is being held incommunicado, but credible reports have emerged that he's been subjected to waterboarding—a process by which the prisoner is strapped to a board and water is poured over his face, almost to the point of drowning. Current and former counterterrorism officials

say that this practice was approved by secret rules formulated after September 11; the Bush administration denies it. Mohammed's sons, aged seven and nine, were also taken into custody—undoubtedly providing another source of leverage.<sup>49</sup> (The Nation's Eyal Press is among the few to remark on the sinister nature of such hostage taking: "Any threat to physically harm a captive's children would constitute torture."<sup>50</sup>)

Among the critics of Mohammed's treatment is the CIA inspector general, John L. Helgerson. In a still-classified report written in 2004, Helgerson mentioned Mohammed by name and listed ten CIA interrogation techniques—including waterboarding—that qualify as cruel, inhuman, and degrading treatment, and therefore violate the Convention Against Torture.<sup>51</sup>

Another al-Qaeda operative, Abu Zubayda, was injured in the shoot-out leading to his capture. He was then denied pain medication during interrogation. While not deliberately *causing* the pain, CIA interrogators did use it strategically, offering relief as an incentive to cooperation. This approach won them information leading to the arrests of suspected al-Qaeda leaders and gave them the details of an alleged "dirty bomb" plot that resulted in the arrest of José Padilla.<sup>52</sup> One military official commented on Zubayda's treatment: "It's not pulling out fingernails, but it's pretty brutal."<sup>53</sup>

It is also a clear violation of international law—not only the torture, but the practice of disappearance that makes it so available. According to the UN Commission on Human Rights, "Prolonged incommunicado detention ... can *in itself* constitute a form of cruel, inhuman, or degrading punishment."<sup>54</sup> Abu Maan, a former Iraqi Special Forces general held at Abu Ghraib, explains why:

I never thought I would get out alive because they didn't give me a Red Cross number. ... If someone wasn't given a number he remained in a situation of 'deferred death.' Everyone who wasn't given a number felt he could die in an hour, the next day, the day after.<sup>55</sup>

The Geneva Conventions require the registration of all detainees. To fail to do so is considered a "grave breach"—in other words, a war crime. Yet in June 2004, Donald Rumsfeld admitted that, at the request of CIA director George Tenet, he had ordered an Iraqi national kept off official lists of prisoners and hidden from the Red Cross. The prisoner, code-named "Triple X" by the US military, is said to be a member of Ansaw al-Islam, a group responsible for many attacks in Iraq.<sup>56</sup>

"Triple X" was later identified as Hiwa Abdul Rahman Rashul. Rashul was captured by the Iraqi Kurds in the summer of 2003. The CIA took him out of Iraq for questioning, but in October 2003 the agency's general counsel said that the man had to be returned to Iraq to meet the demands of the Geneva Conventions. That's when Tenet asked Rumsfeld to help hide the prisoner from the Red Cross. Rumsfeld promptly agreed.<sup>57</sup>

James Pavitt, the former CIA deputy director of operations, said that the policy of moving Iraqi detainees to other countries was approved by the National Security Council and disclosed to congressional committees. "Any impression that we were operating high, wide and handsome, without appropriate congressional oversight, I think would also be incorrect."<sup>58</sup>

Rumsfeld has acknowledged that he knew of other prisoners who were similarly hidden.<sup>59</sup> And General Paul J. Kern told the Senate Armed Services Committee that the number of "ghost detainees" was "in the dozens to perhaps up to 100."<sup>60</sup> The real number may actually be much higher. As an unnamed intelligence officer told the *Washington Post*, "There were lax procedures for them, and we just don't know much about them."<sup>61</sup> Once the process was approved in the first instance, field operatives accepted it as an established practice and stopped asking for the official okay.

#### YOU GET WHAT YOU PAY FOR

The US government does not just take advantage of the harsh methods, low standards, and torture-chamber infrastructure common in authoritarian societies. It also helps to build and maintain these systems of brutality by providing the necessary money, weapons, training, and diplomatic cover.

Obviously, a critique of US military aid and the human rights records of our government's allies deserves more attention than I can give it in the context of this book. So I will limit myself to discussing the very largest recipients of direct aid during the last 25 years.<sup>62</sup> I will then describe the practical instruction offered by our military and intelligence agencies, and end the chapter by locating these programs in the context of America's global ambitions.

Since the 1979 Camp David Peace Accords, Israel has been the largest recipient of US military aid by far, and Egypt the second largest. The reasons for this are clear enough: Israel is the United States's regional enforcer, and Egypt was the first Muslim nation to make a separate peace with Israel, thus accepting the role of media-



tor between Israel and its neighbors. Aside from these, there have been three main beneficiaries—El Salvador, Turkey, and Colombia.<sup>63</sup> Not coincidentally, each third-place country was, at the time of peak US involvement, engaged in a prolonged internal struggle against a popular left-wing insurgency. It is worth looking at this record in more detail and considering just what the US got for its money.

### ▸ *Israel: The US's Junior Partner in the Middle East*

Israel is the single largest beneficiary of US foreign aid, receiving \$2.2 billion in 2005.<sup>64</sup> According to the Congressional Research Office, US aid to Israel totaled \$87.1 billion between 1949 and 2002.<sup>65</sup> To understand this investment, we should consider the services Israel has rendered as a junior partner of US imperialism. Phyllis Bennis reviews the record:

In the Middle East, Israel's overwhelming military superiority kept nationalist Arab regimes in check, and was important in suppressing nationalist uprisings in other Arab countries. ... Throughout the Cold War, Israel [also] provided arms, training, and other military and intelligence support to a host of unsavory dictatorships in Africa, Latin America, and elsewhere. ... Israel armed UNITA rebels in Angola and RENAMO in Mozambique, backing their guerrilla campaigns aimed at destabilizing those newly independent African countries. Israel developed long-standing ties with the Somoza dictatorship through its last years in Nicaragua, and then continued with a major role in backing the Reagan administration's favorite terrorist organization, the Contras whose civil war devastated that impoverished country. ... The Guatemalan arms purchases from Israel picked up steam after public pressure in the United States forced a downsizing of direct military aid from Washington to the Guatemalan junta. And Israel maintained long-standing strategic economic, industrial, military and eventually nuclear weapons ties with apartheid South Africa. These were only some of those tasks.<sup>66</sup>

To perform these important functions, it is necessary that Israel be given a great deal of latitude in pursuing its own expansionist project and in managing the rebellious population of the Occupied Territories. Something of the course of this decades-long counterinsurgency effort can be seen in the story of Israel's experiment with legalized torture.<sup>67</sup>

Beginning in 1967, Palestinians in the West Bank and Gaza could be held incommunicado for as long as 90 days, renewable at a hearing under an Israeli military judge. Under these circumstances, torture was common and coerced confessions were regularly used to gain convictions.

During the first Intifada (1987–1993), in particular, the use of torture was something of an open secret. It certainly fit in with the authorities' overall approach to handling the uprising. In January 1988, defense minister Yitzhak Rabin called on troops to use "might, power and beatings" in crushing the Palestinians. In the first five days of the new policy, al-Shifa Hospital treated 200 people, mostly for broken elbows and knees. Three had fractured skulls. Rabin promised, "We will make it clear who is running the territories."<sup>68</sup>

One soldier told the paper *Ha'aretz*,

I break into a cold sweat when I think I'll have to go back into that filthy place. I'm not the kind of guy who disobeys orders or refuses to serve in the [occupied] territories. But I doubt whether I'm emotionally capable of again seeing the terrible things I saw this time at close quarters. I'll be having nightmares for weeks to come.

What I'm talking about is the way the border police question Arabs they've arrested on suspicion of throwing stones or petrol bombs. I saw them really smashing up 13- or 14-year-old kids a few times and I just felt sick. ... For the first time I really understood what occupation means.<sup>69</sup>

Ironically, while the military was becoming increasingly aggressive, the judiciary was pursuing reform—of a sort. After a scandal linked the General Security Services (GSS) to extrajudicial executions—in a word, assassinations—a commission headed by former Israeli Supreme Court chief justice Moshe Landau was appointed to investigate their practices. The Landau commission issued a report in October 1987, and its recommendations were accepted by the government a month later.

Among other findings, the commission reported that between 1967 and 1987 half of all GSS interrogations led to trials and the "overwhelming majority of those tried were convicted on the basis of their confession in court." Since these confessions were usually coerced, GSS agents routinely lied about their interrogation techniques. "False testimony in court soon became an unchallenged norm, which was to be the rule for 16 years."<sup>70</sup>

Troubled by this flaw in the integrity of the legal system, the Landau commission recommended changing policy to allow the GSS

to use rough methods without having to fib about it later. The new rules authorized the use of psychological pressure and "a moderate measure of physical pressure." The report specified that "the pressure must not reach the level of physical torture or maltreatment of the suspect or grievous harm to his honor which deprives him of his dignity"—but it also allowed that "actual torture ... would perhaps be justified in order to uncover a bomb about to explode in a building full of people." A ministerial committee (including the prime minister, minister of defense, minister of justice, and minister of internal security) was established to periodically review the guidelines and monitor their application.<sup>71</sup>

Over the next 12 years, human rights groups documented the use of hooding, sleep deprivation, stress positions, focused beatings, confinement in closet-sized rooms, continuous loud music, extremes in temperature, inadequate time for eating and using the toilet, and violent shaking.<sup>72</sup> In 1998, B'Tselem (the Israel Center for Human Rights in the Occupied Territories) estimated that the GSS interrogated between 1,000 and 1,500 Palestinians each year, using torture in 85 percent of its interrogations.<sup>73</sup>

Abd al-Rahman al-Ahmar was taken into custody in November 1995 and spent two months being interrogated by the GSS. He later testified:

In the first days of the interrogation, I suffered from circumstances that one's imagination cannot comprehend and could never accept. A person cannot imagine what it's like to sleep for two to four hours in four or five days under blaring music and under surroundings of extreme cold and continuous rounds of interrogation, sometimes lasting for 30 continuous hours. ... There were very different methods—continuous body-hangings in so many different ways where each separately or all together cause exhaustion and pains in the body and in all the internal organs. Sometimes the body-shaking/rattling technique was used. ... Sometimes they bound a person to a very small chair leaving half his body hanging in the air. ... And as to the pains that this position caused, no words can describe them adequately. ... I suffered from continuous vomiting.<sup>74</sup>

Another victim of the Landau commission's new policy was Abd al-Samad Harizat, a 30-year-old Palestinian man, who died in GSS custody on April 25, 1995. The autopsy showed that he had suffered a subdural hemorrhage within his skull as a result of being fiercely shaken. It was later revealed that, on April 22, he'd been

shaken 12 times between 4:45 AM and 4:10 PM, after which he went into a coma and never awoke. No one was punished for Harizat's death. Human rights groups used the case to file for legal injunctions against shaking, but the courts refused to intervene.<sup>75</sup>

In 1997, the UN Committee Against Torture explicitly described the GSS's approved techniques as torture, specifically condemning "restraining in very painful conditions," "hooding under special conditions," "sounding out loud music for prolonged periods," "sleep deprivation for prolonged periods," "threats, including death threats," "violent shaking," and "using cold air to chill."<sup>76</sup>

The following year, in a special nine-judge session, the Supreme Court ruled that, while the minister of justice had the authority to approve interrogations, the methods used must be "reasonable." Furthermore, the court determined that

a reasonable investigation is necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever. ... Human dignity includes the dignity of the suspect being interrogated.<sup>77</sup>

Following this reasoning, the court prohibited shaking, stress positions, painful restraints, sleep deprivation, prolonged hooding (or even blindfolding), and loud music. It did allow the use of handcuffs for the protection of the interrogator, and authorized sleep deprivation so long as it was incidental to the interview and not intended to "break" the subject.<sup>78</sup> The court also left open the "necessity" defense and, oddly, suggested that its ruling depended on parliamentary law rather than fundamental human rights or Israel's treaty obligations. The court wrote:

If it will nonetheless be decided that it is appropriate for Israel, in light of its security difficulties, to sanction physical means in interrogation ... [then] this is an issue that must be decided by the legislative branch which represents the people.<sup>79</sup>

The ruling had its effect, for a while. After the judgment was issued, reports of abuse greatly decreased. That changed with the second Intifada.

The second Intifada was triggered by then-Likud Party leader Ariel Sharon's September 28, 2000 visit to Haram al-Sharif, a Muslim holy place in Jerusalem. The sight of Sharon—sometimes called the "Butcher of Beirut" for his role in a 1982 massacre—along with almost 1,000 soldiers, occupying a cherished religious site prompted

immediate protests.<sup>80</sup> Israeli troops responded to stone throwing with gunfire. Weeks later, Palestinians responded with gunfire of their own. This only increased Israeli repression, especially against unarmed demonstrators. Twenty Palestinians were killed in September, and 121 in October. Almost all of the victims were unarmed. In November, militants resumed attacks against Israeli civilians. Israel responded with curfews, checkpoints, and military raids in which many more civilians were killed than militants.<sup>81</sup>

The goal, as it was explained by Israeli army chief of staff Moshe Yaalon, was pretty straightforward: "The Palestinians must be made to understand in the deepest recesses of their consciousness that they are a defeated people."<sup>82</sup>

Torture was a practice easily in keeping with this aim. The case of Jihad Latif Shuman, a UK citizen of Lebanese origin, was typical. On January 5, 2001, the GSS arrested him on suspicion of being a member of the radical Shiite organization Hizbullah. Shuman says that while he was in custody, he was made to sit for hours in a low chair with his feet pulled behind him, forced to bend at the waist for long periods, deprived of sleep, and slapped repeatedly until his nose bled. Medical exams confirmed his injuries.<sup>83</sup>

Ruhi Salaman tells of very similar treatment two years later. Salaman was arrested in Nazareth and beaten at the local police station. He was then transferred to a GSS facility at Kishon. There,

Two interrogators interrogated me continuously throughout the weekend until Sunday without allowing any sleep, and during the whole period I was seated on a chair diagonally with my hands shackled behind my back and tied by shackles to my feet, so that my back would slant backwards and during the whole time received blows to my face and stomach.<sup>84</sup>

Ziad Arafah, a political activist in the Balata refugee camp in the West Bank, reports that he's been arrested about 14 times. The first time, in 1983, an interrogator put on rubber gloves and squeezed his testicles. Another time he was kept in his underwear in a small cold room and splashed with water every few hours. Most recently, in 2003, he was subject to several days of sleep deprivation. He reports that in the past few years, the emphasis has moved from physical to psychological techniques, but he adds that the soldiers are becoming more gratuitously cruel.<sup>85</sup>

As of April 2003, over 28,000 Palestinians—about 14 percent of the resident Palestinian population—had been arrested in the course of the second Intifada; 5,362 of were in custody that May—



1,107 without charges.<sup>86</sup> Government documents and court records acknowledge that prisoners are sometimes slapped or hit, held in stress positions for a half hour at a time, shaken, deprived of sleep, and kept in isolation for extended periods.<sup>87</sup> Furthermore, in July 2002, the GSS admitted to torturing 90 Palestinians, citing “ticking time bomb” emergencies. Human rights groups fear that the real number of victims is actually much higher.<sup>88</sup> Amnesty International sadly concludes that “the torture of Palestinians held by the GSS [is] once again widespread.”<sup>89</sup> The Public Committee Against Torture in Israel goes further:

Torture is carried out in an organized and institutional manner. ... Interrogators make orderly requests from their superiors, receive permission in advance, and use certain methods again and again, at least some of which ... require collaboration between a number of interrogators.<sup>90</sup>

So long as Israel struggles for control of the Occupied Territories, its recourse to torture is likely to persist. And so long as Israel continues to serve as our government’s agent in the region, the US will support it both in its territorial claims and in its general abuse of the Palestinian population, including the use of torture.

### ► *Egypt: An Attractive Ally*

Given the region’s long-standing tensions, it is difficult to overstate Egypt’s importance to US interests in the Middle East. This country has served well in its role as mediator between Israel and the Arab states. And its truce with Israel is vital to maintaining international access to the Suez canal. But there are other features of Egyptian politics that make it an attractive ally in the War on Terror and qualify it for extensive military aid (\$1.3 billion in 2005).<sup>91</sup>

Of special interest to the United States is Egypt’s impressive record of human rights abuses, in particular its repression of Islamic militants (who are often detained without charges)<sup>92</sup> and its extensive experience with the use of torture.

Human Rights Watch offers this overview:

Torture in Egypt is a widespread and persistent phenomenon. Security forces and the police regularly torture or ill-treat detainees, particularly during interrogation. ... In the past decade, suspected Islamist militants have borne the brunt of these acts. Recently, increased numbers of secular and leftist dissidents

have also been tortured by police and security officials. In March and April 2003, for instance, the authorities tortured and ill-treated in detention some demonstrators and alleged organizers of public protests against the US led war in Iraq.

Methods of torture include beatings with fists, feet, and leather straps, sticks, and electric cables; suspension in contorted and painful positions accompanied by beatings; the applications of electric shocks; and sexual intimidation and violence.<sup>93</sup>

Besides torturing political prisoners, Egypt's police also use similar tactics in the routine maintenance of social control and the enforcement of conservative moral standards. The abuse of criminal suspects is quite common, as is that of marginalized social groups, especially homeless children and homosexual men.<sup>94</sup>

In a typical statement, one man told Amnesty International of his treatment at the Egyptian State Security Investigations headquarters in Lazohly Square:

I was stripped of most of my clothes. They started beating me and they also used electric shocks on different parts of my body, including my private parts. ... They also put me on a table and suspended my arms from the door, and then pushed the table out from under me. I was left suspended for about 30 minutes. This torture was repeated many times.<sup>95</sup>

Egypt has proven its usefulness once again by bringing this expertise to the US-run War on Terror. For example, Mamdouh Habib was arrested in Pakistan and transferred, at the request of the United States, to Egyptian custody. No warrant had been issued for his arrest, no charges were filed, and he was not allowed to appear before any court. In Egypt, Habib was kept in a bare six-by-eight-foot cell, where he slept on the concrete floor with only a single blanket. He also spent time in three other cells—one with water up to his chin, forcing him to stand for hours on tiptoe; one with a low ceiling and water up to his knees, forcing him to stoop uncomfortably; and one with ankle-deep water and a generator within sight, where he was told he would be electrocuted if he didn't confess.<sup>96</sup>

Habib tells of being repeatedly kicked, punched, hit with sticks, burned with cigarettes, shocked with a cattle prod, doused with cold water, deprived of sleep, and "sometimes suspended from hooks on the wall." On at least one occasion, Habib says, he was hung by his wrists while standing on a round drum. When he refused to an-

swer questions, interrogators would throw a switch electrifying the drum. Habib would then move his feet to avoid shock, the drum would turn, and all his weight would be forced onto his arms. This continued until he passed out.<sup>97</sup> While in Egypt he signed multiple confessions, all false. After six months in Egypt, he was flown to Bagram, and then Guantánamo. He was released in January 2005, without charges.<sup>98</sup>

Former CIA counterintelligence chief Vincent Cannistraro acknowledges that such abuse is common: "Egyptian jails are full of guys who are missing toenails and fingernails."<sup>99</sup> Some of whom, we might add, are there as a favor to the US government.

### ► *El Salvador: A Bloodthirsty Regime*

The level of military funding for Israel and Egypt has been relatively stable over the past quarter century, while three countries have held the third-place slot during the same period. Each of those countries was at the time engaged in a local counterinsurgency campaign characterized by deliberate brutality, a resolute disregard for the rights of the civilian population, and state-sponsored terrorism. Also, in each case, violence escalated as the US increased its involvement. El Salvador typifies the pattern.

In December 1980, when reporters asked Salvadoran president José Napoleón Duarte why he was facing a guerrilla insurgency, he answered with surprising candor:

Fifty years of lies, fifty years of injustice, fifty years of frustration. This is a history of people starving to death, living in misery. For fifty years the same people had all the power, all the money, all the jobs, all the education, all the opportunities.<sup>100</sup>

The Farabundo Martí Front for National Liberation (FMLN) wanted to change this situation. But the people who had the power, money, jobs, education, and opportunities intended to keep them, and the United States provided the assistance necessary to insure that the lies, injustice, frustration, starvation, and misery would continue.

Jimmy Carter began the process, sending \$10 million in emergency aid, along with advisers, just before the end of his term. Two years later, he admitted that "the government in El Salvador is one of the bloodthirstiest in [the] hemisphere."<sup>101</sup> Support deepened under Reagan, as the US supplied the Salvadoran army with training, equipment, and strategic guidance—as well as CIA reconnaissance support and military airstrikes.<sup>102</sup>

By 1990, the US had sent the Salvadoran regime more than \$6 billion. Meanwhile, the country's army expanded from 12,000 soldiers in 1979 to 22,000 soldiers and 33,000 paramilitary troops in 1983.<sup>103</sup> In the first five years of the war, from 1979 to 1984, between 20,000 and 30,000 people were killed, mostly by the army and its affiliated paramilitaries.<sup>104</sup> Thousands more "disappeared"—kidnapped, tortured, murdered, and disposed of quietly. The victims were usually suspected members of peasant, labor, religious, human rights, refugee, or relief organizations, or of opposition parties—but they sometimes included journalists, teachers, and children as well.<sup>105</sup>

These atrocities began right away and intensified with US assistance. Dr. Juan Romagoza was detained in El Salvador at the end of 1980. He recalls,

I thought I'd never make it out of there. ... I saw people being killed. I suffered terrible physical mistreatment. I was kicked and beaten up and kept naked and blindfolded, and I was bound and hung up by my hands. They used electrical shocks in every possible way and rape with instruments with sticks and poles and all kinds of things, and then they shot me in the arm. ... There were North Americans with the high-ranking Salvadoran military officers. ... They all were there when I was hanging from my hands, and they were asking questions and laughing.<sup>106</sup>

No amount of horror discouraged US assistance. In December 1981, Salvadoran troops massacred between 700 and 1,000 people in El Mozote. Some were hacked to death with machetes, others were beheaded. Children were tossed into the air and caught on bayonets. Very young girls were raped before being killed. One officer commented, "If we don't kill them now, they'll just grow up to be guerrillas."<sup>107</sup>

A month later, on January 28, 1982, Reagan certified to Congress that El Salvador was "making a concerted and significant effort to comply with internationally recognized human rights," thus opening the path to increased funding. Two days after Reagan's certification, the Salvadoran military launched a series of nighttime raids, in which soldiers pulled 20 people from their beds, tortured and killed them.<sup>108</sup>

Such atrocities, of course, were exactly what they'd been trained for, courtesy of the US. One former Salvadoran National Guard soldier said,

I belonged to a squad of twelve. We devoted ourselves to torture, and to finding people whom we were told were guerrillas. I was trained in Panama for nine months by the ... United States for anti-guerrilla warfare. Part of the time we were instructed in torture.<sup>109</sup>

A deserter from the Salvadoran Army also told the US media of torture classes. He reported that eight Green Berets were present during an exercise in which the students practiced their skills on teenaged prisoners. In August 1986, CBS reported that three senior Salvadoran National Guard officers, all with ties to death squads, had received training at a police academy in Phoenix, Arizona.<sup>110</sup> A Pentagon officer acknowledged the United States' influence: "Every soldier in [El Salvador's] army has been trained by us in one way or another."<sup>111</sup>

The human rights report of the Council on Hemispheric Affairs lists Guatemala and El Salvador as tied for the position of worst human rights offender in the Americas between 1980 and 1987. It describes them as the "only two governments in the hemisphere that abducted, killed, and tortured political opponents on a systematic and widespread basis." (Listed in third place: the US-backed contra army in Nicaragua.)<sup>112</sup>

Noam Chomsky helps situate this brutality in its regional context:

In Central America, the Reagan Doctrine deserves a large share of the credit for a most impressive slaughter. The death toll under Reagan in El Salvador passed 50,000 and in Guatemala it may approach 100,000. In Nicaragua, the terror was less successful, amounting to only some 11,000 civilians killed under Reagan by 1986; the problem is that in Nicaragua the population has an army to defend it from the US-organized terrorist forces, whereas in El Salvador and Guatemala the terrorist force attacking the civilian population was the army. The death toll under Reagan in this region alone thus amounts to 150,000 or more. This was, furthermore, not ordinary killing, but rather Pol Pot-style atrocities, with extensive torture, rape, mutilation, "disappearance," and similar measures to ensure that the populations would be properly traumatized.<sup>113</sup>

All this, of course, was justified in terms of cold war anti-communism.



▸ *Turkey: "Total War"*

From all appearances, the Turkish government adopted a similar strategy in its effort to forcibly assimilate the Kurds, including systematic efforts to eliminate Kurdish culture. The government constantly revises the tactics deployed in its struggle to find the right mix of concessions and repression. At various times, Kurdish newspapers, radio, and television broadcasts have been banned, the teaching of Kurdish in schools has been outlawed, and parents have been forbidden to give their children Kurdish names.<sup>114</sup> Members of parliament have been imprisoned and Kurdish parties forcibly dissolved.<sup>115</sup> A 1991 anti-terror law specifically declared that any "written or oral propaganda and assemblies, meetings and demonstrations aimed at damaging the indivisible unity of the State of the Turkish Republic with its territory and nation are forbidden."<sup>116</sup> In short, the very idea of Kurdish separatism—and, one could argue, the reality of a distinctly Kurdish identity—was made illegal. In 1993 the government described its policy as one of "total war."<sup>117</sup>

This approach has had predictable implications for the treatment of those suspected of supporting Kurdish causes. Sukru Yilmaz was detained in Turkey in March 1992:

I was blindfolded at the Gendarmerie station and taken to their interrogation centre in Batman. While I was there I was tortured horribly. I will try to explain what happened.

They spread out my arms and tied them to an iron pipe. They then lifted me upwards. I hung there as if crucified. While I hung there, they attached an electrical generator to my little toe and to my penis. They poured water over me and started to give electricity. At the same time, another person was attempting to insert a truncheon or a bottle in my anus, and made me bleed. Another was squeezing my testicles. I could not stand the pain and fainted. ...

The second torture session they repeated the same torture, saying "We have made even stones talk here. We will make you talk. ..." After being crucified a second time, I once again fainted. They then laid me down and subjected me to *falaka*, passing my feet through the back of a chair. One of them sat on my legs. Most of my body was lying naked on the concrete, and two people beat the soles of my feet. It was obvious they were experts at the job. I do not know how long it lasted. Eventually I could not feel anything anymore. They threw me naked into a

cell. There was nothing in the cell. I slept on concrete. ... I was given no food at all while in detention.<sup>118</sup>

Such stories are not uncommon, especially in the Kurdish areas in the southeast of the country. Between 1991 and 1994, the Human Rights Foundation treated more than 1,200 victims of torture at its medical center in Ankara.<sup>119</sup> Aside from a brief respite in the spring of 1993—during which the Kurdish Workers' Party (the PKK) declared a cease-fire and the government legalized spoken Kurdish, offered amnesty for demobilized guerrillas, and released many political prisoners<sup>120</sup>—the early 1990s saw a sharp escalation in violence.

Amnesty International estimates that the government killed 20 people for political reasons in 1991, 362 in 1992, and more than 400 in 1993.<sup>121</sup> AI specifically notes that during 1992, about 12 people died under torture at the hands of the Turkish government.<sup>122</sup> According to the Turkish Human Rights Association, 10 people died under similar conditions in the *first month* of 1994.<sup>123</sup> Likewise, Human Rights Watch estimates that 5,000 people had been killed in the conflict between 1984 and the end of 1992; 7,000 by the end of 1993; and, 13,000 by the end of 1994.<sup>124</sup>

This marked spike in violence coincides with increased military spending and, crucially, with increased US assistance. According to its own reports, Turkey spent \$4.4 billion policing the southeastern region of the country in 1992, and \$7.5 billion in 1993. This amounted to 20 percent of the state's total budget.<sup>125</sup> By June 1993, there were 140,000 government troops in the Kurdish areas.<sup>126</sup> The following September, the military began putting Kurdish refugees in detention camps, often after the army had forced them from their villages.<sup>127</sup>

At the peak of the conflict, in 1994, Turkey was the third-largest recipient of US military aid, receiving about \$400 million, plus billions in arms sales. This represented a substantial step up, compared with the relatively modest \$3.1 million Turkey received in 1993. During the height of the counterinsurgency, the US was supplying 80 percent of Turkey's weaponry. And this support was unwavering, even when a 1995 State Department report acknowledged that the government was using torture, extra-judicial killings, and forced evacuations.<sup>128</sup>

Vice President Al Gore explained the moral principle underlying the Clinton administration's support: "It's not fair for us to urge Turkey to not only be a democratic country but to recognize human

rights and then not to help the government of Turkey deal with terrorism right within its own borders.”<sup>129</sup>

NATO chief of staff General John Shalikashvili explained the policy in somewhat different terms, calling Turkey “the front-line in the post-Cold War era.”<sup>130</sup>

### ► *Plan Colombia: A Masquerade*

In 1999 Colombia replaced Turkey as the third-largest recipient of US military aid, receiving \$300 million in direct aid and \$60 million in arms sales. At once, violence in the country intensified.

The Colombian government’s Human Rights Ombudsman’s Office reported 68 percent more incidents of mass murder targeting civilians in the first half of 1999 than in the equivalent period of 1998. Between January and June of 1999 the country averaged one such massacre every day. According to the Colombia Commission of Jurists, almost 80 percent of the violence was the work of government-affiliated paramilitary groups.<sup>131</sup>

The next year, 2000, President Bill Clinton secured congressional approval for Plan Colombia, a two-year “emergency aid” package totaling \$1.6 billion.<sup>132</sup> The official story was that the Colombian government needed this money to fund its anti-drug operations and eliminate the coca crop—an idea nearly all informed observers deem laughable.

Amnesty International calls the Colombian drug war “a myth,” though the atrocities it engenders are all too real.<sup>133</sup> The US Drug Enforcement Agency reports “drug-related corruption” in “all branches of government”<sup>134</sup>—which is a relatively nice way of saying that the Colombian government itself is directly implicated in narcotics trafficking.<sup>135</sup> On the other end of the equation, the US State Department admits that the Colombian military only uses its US-supplied weapons for drug enforcement about 50 percent of the time.<sup>136</sup> The rest of the time, they are used against left-wing insurgents.

So one does not have to look far to find other, more plausible explanations for the US investment of arms, funds, and expertise in Colombia. Retired US Special Forces soldier Stan Goff has written,

When I was training Colombian Special Forces in Tolemaida in 1992. ... We knew perfectly well, as did the host-nation commanders, that narcotics was a flimsy cover story for beefing up the capacity of armed forces who had lost the confidence of the population through years of abuse.<sup>137</sup>

Senator Patrick Leahy seems to have drawn a similar conclusion: "What we are really seeing is a ratcheting up of a counter-insurgency policy masquerading as a counter-drug policy."<sup>138</sup>

The largest guerrilla group—and the main target of US-directed Colombian military efforts—is the Revolutionary Armed Forces of Colombia (FARC), a left-wing movement with de facto control over almost half the country.<sup>139</sup> While the FARC taxes coca growers, the government-affiliated paramilitaries are more commonly involved in the actual production and transport of the crop.<sup>140</sup> Yet US "anti-drug" missions concentrate almost exclusively on the areas controlled by the left-wing guerrillas, whose connection to the drug trade is peripheral, and avoid those areas where the right-wing drug-running paramilitaries are active.<sup>141</sup> In other words, if the US government is genuinely interested in stemming the flow of cocaine to the United States, it is backing the wrong side in Colombia. This is likely true in a broader sense as well, since it was largely the process of economic liberalization and the region-wide crisis it provoked that forced the peasant population to take up coca production in the first place.<sup>142</sup>

Guerrilla activity began in Colombia in the late 1960s, and since that time, the government's response has taken a familiar form. Amnesty International writes:

Over the years the armed forces have implemented a counterinsurgency strategy characterized by the systematic and widespread violation of human rights. Human rights violations, including torture, are employed as a means to ensure civilian communities desist from providing any real or imagined support to guerrilla forces through terror. ... Torture, including rape, is [also] used as a tactic to terrorize communities and provoke mass displacement and to ensure military control over a region.<sup>143</sup>

US aid to Colombia was relatively modest until 1998.<sup>144</sup> One obstacle to full support was the 1996 Leahy Provision, which forbids military assistance to units participating in human rights abuses. US officials told Human Rights Watch that they had trouble finding *any* units in the Colombian military that would qualify for funding according to Leahy's criteria. But President Clinton was not deterred. Though there is no legal mechanism for exempting countries from the provision, Clinton did just that in 2000 when he waived the requirements of the law in order to implement Plan Colombia.<sup>145</sup> Human Rights Watch comments on the significance of this move:



With one signature, the White House sent a direct message to Colombia's military leaders that overshadowed any other related to human rights. Put simply, the message was that as long as the Colombian military cooperated with the US antidrug strategy, American officials would seek to waive human rights conditions.<sup>145</sup>

The Colombian government seems to have understood this message. In 2001, it passed a national security bill increasing the military's autonomy, exempting it from spending cuts, limiting civilian oversight, and granting the military prosecutor's office exclusive jurisdiction over human rights claims.<sup>147</sup>

Colombia's rate of military spending reveals a familiar trend. In 1985, the military budget represented 1.2 percent of the country's gross national product. By 1996, that figure rose to 2.16 percent. In 1999, it was 3.5 percent.<sup>148</sup> Following the pattern we've seen elsewhere, US military aid accounts for a great deal of this increase. In 1996, the US gave the Colombian military \$66 million. In 1998, this figure jumped to \$860.3 million. And in 2000, with Plan Colombia, it jumped again, to \$1.3 billion.<sup>149</sup> The rate of atrocities increased accordingly. In 1990 there were 400 people killed in massacres. In 1994, 504 were killed. In 1999, 847. And in 2000, 1,226.<sup>150</sup>

The predictable effect of US aid has been to prolong the war, since local elites would otherwise have had strong incentives to negotiate with the guerrillas. But by relieving them of some of the costs, the US made it possible to intensify the violence instead.<sup>151</sup>

On January 10, 2002, President Bush signed a bill (Public Law 107-115) authorizing \$380.5 million in aid, mostly military aid, to Colombia. A few weeks later, he requested \$35 million more, authorized for both anti-drug and counterinsurgency operations. In keeping with the pattern, the "emergency aid" practically coincided with the collapse of peace talks and the escalation of the conflict.<sup>152</sup>

Amnesty International describes the situation:

In 2002 more than 4,000 civilians were killed for political motives, over 1,000 people "disappeared," over 400,000 were displaced—a record high—and at least 2,700 people were kidnapped, some 1,500 of whom were kidnapped by guerrilla groups and paramilitaries. In short, some 20 people per day are victims of politically-motivated killings and forced disappearances. ...

Most non-combat politically-related killings are committed by paramilitaries cooperating with the acquiescence of and in collusion with the security forces. This increases to over 90% in the case of "disappearances."



Recent data relating to torture indicate that around 55% is committed by army-backed paramilitaries, 11% directly by the security forces and almost 7% by armed opposition groups. In the remaining cases responsibility is not known. The majority of victims of torture are subsequently killed. Between July 1996 and June 2001 over 1,200 people were reportedly tortured, of these over 88% of victims were subsequently killed.<sup>153</sup>

The relationship between the military and the illegal paramilitaries is so close that the paramilitaries are commonly called the army's "Sixth Division." The military only acts against the paramilitaries in symbolic ways, while ignoring warnings of attacks against the civilian population, and sometimes providing the paramilitaries with support and supplies.<sup>154</sup> But this is only the last link in a longer chain of responsibility. As political scientist Nazih Richani argues, the Colombian military relies more on the assistance of the United States than on the authority of its own government.<sup>155</sup> In practical terms, it is our proxy army, and the paramilitaries are its covert wing. Their policies are, in effect, our policies. Their atrocities are our atrocities.

In 2004, Human Rights Watch reported, "Colombia leads the Western hemisphere in reported human rights and international law violations. ... [And] the United States continues to be the most influential country in Colombia."<sup>156</sup> This influence shows no sign of waning, and may actually be on the increase. Colombia remains the third-largest recipient of US aid—\$641.60 million in military and police aid for 2005.<sup>157</sup> And the number of US soldiers and military contractors deployed to the country has more than doubled, from 388 in 2002 to 800 in 2005.<sup>158</sup> Plus, of course, the less quantifiable benefits of US diplomatic support, intelligence sharing,<sup>159</sup> and counterinsurgency instruction.

#### **SCHOOL OF THE AMERICAS: THE US TORTURE ACADEMY**

US assistance to brutal regimes in Latin America has not been restricted to providing guns and money. Our government has also shared with its clients the benefits of American know-how. In fact, the US Army has developed an institution devoted to the propagation of its techniques and the creation of military experts throughout Latin America. This institution is the US Army School of the Americas (SOA).

Since it was formed in 1946, the SOA has trained more than 60,000 Latin American soldiers in counterinsurgency strategy, sniper techniques, commando tactics, psychological operations, military intelligence, and interrogation. The school was originally based in Panama, but was relocated in 1984 to Fort Benning, Georgia. Faced with serious public criticism, in 2001 it officially closed—only to immediately open again as the Western Hemisphere Institute for Security Cooperation.<sup>160</sup>

Among the SOA's illustrious alumni are Argentine dictators Roberto Viola and Leopoldo Galtieri, who ruled during 1981 and 1982, respectively, toward the end of the "Dirty War"; seven of the men responsible for Bolivia's 1980 coup, including paramilitary leader and convicted drug runner Luis Arce Gomez; former Guatemalan dictator Fernando Romeo Lucas García, army chief of staff Bendicto Lucas García, and defense minister Luis René Mendoza, the chief architects of the genocidal campaign of rape, torture, and murder aimed at wiping out the country's Mayan population; and Daniel Bali Castillo, the founder of Honduras's Battalion 3-16, which carried out a multiyear campaign of disappearance and torture.<sup>161</sup>

The human rights organization SOA Watch summarizes this history: "Consistently the countries with the worst human rights records have sent the most students to the SOA during the peaks of repression."<sup>162</sup>

It is not surprising, then, that the country which has sent the most students is Colombia. Nor should it surprise us that in 1993, when the UN Truth Commission listed the names of officers responsible for atrocities during El Salvador's civil war, two-thirds were SOA graduates. Among those with SOA credentials were the commanders involved in the 1980 assassination of Archbishop Óscar Romero, the murder of four US churchwomen that same year, the 1981 El Mozote massacre (which killed almost 1,000), the assassination of labor leaders at the Sheraton Hotel (also in 1981), the 1983 Lake Suchitlan massacre (which left 117 dead), the Las Hojas massacre (16 dead, also in 1983), the Los Llanitos massacre of 1984 (68 dead), the 1988 San Sebastian massacre (10 dead), and the 1989 University of Central America massacre (8 dead).<sup>163</sup>

US Army major Joseph A. Blair taught at the School of the Americas during the 1980s. Since his retirement in 1989, he has become a vocal critic of the school, calling for its closure. Describing the curriculum, he says, "The techniques included murder, assassination, torture, extortion, false imprisonment."<sup>164</sup>

The school's materials verified Blair's claim. In 1992, a Defense Department investigation concluded that seven Spanish-language

manuals distributed through the SOA had not been properly vetted and ought not have been used. One was technically within policy, but its information was outdated. Two improperly included classified information. And five directly violated policy: "To illustrate, the manual *Handling of Sources*, refers to motivation by fear, payment of bounties for enemy dead, beatings, false imprisonment, executions, and the use of truth serum."<sup>165</sup>

The manuals were compiled in 1987 by US Military Intelligence officers in Panama who were working with SOA training materials dating back to 1982.<sup>166</sup> According to a Defense Department memo, these materials were themselves based on documents from "Project X," a "program to develop [an] exportable foreign intelligence training package to provide counterinsurgency techniques learned in Vietnam to Latin American countries."<sup>167</sup> The SOA offered such training from the mid-1960s until 1976 when it was officially "halted by the Carter Administration for fear the training would contribute to Human Rights violations in other countries."<sup>168</sup>

Major Vic Tise, the army officer who created the 1982 version of the handbook, claims that classroom instructors skipped over the objectionable content from Project X, though it remained in the written materials.<sup>169</sup> Blair, his former colleague, disagrees:

Literally thousands of these manuals were passed out. ... The officers who ran the intelligence course used lesson plans that included the worst materials contained in the seven manuals. Now they say that there were only eighteen to twenty passages in these manuals in clear violation of US law. In fact, those same passages were at the heart of intelligence instruction.<sup>170</sup>

#### WE WROTE THE BOOK ON THIS STUFF

The SOA manuals are not the only torture textbooks our government has produced. A 1983 CIA training manual details many techniques familiar from our discussion here, such as the use of blindfolds and restraints, solitary confinement and sleep deprivation, the manipulation of temperature and light, the restriction of bedding and access to the toilet, and—anticipating General Miller by almost 20 years—the importance of coordination between interrogators and guards.

The handbook stresses: "Internal guard personnel must understand what psychological objectives the 'Questioner' is trying to obtain through their handling of the subject." In various places it specifies proper psychological objectives: "impress ... upon the

subject that he is cut off from the rest of the world"; "disrupt the subject's sense of time, day and night"; "prevent the subject from relaxing"; "achieve surprise and the maximum amount of mental discomfort"; "[arouse] intense feelings of shock, insecurity, and psychological stress."<sup>171</sup>

The manual briefly describes standard interrogation techniques, including classics like the good cop-bad cop approach and ostentatiously displaying a large file (usually blank) to convince the subject that the authorities already know everything about him and he's better off cooperating. But more extreme measures are covered as well, including narcosis, psychological regression, and threats.

The manual states:

A threat is basically a means for establishing a bargaining position by inducing fear in the subject. A threat should never be made unless it is part of the plan and the "Questioner" has the approval to carry out the threat.

#### *Examples of threats*

- 1) Turn him over to local authorities for legal action
- 2) Return him to his organization after compromising him
- 3) Public exposure
- 4) Deprivations [This is followed by the handwritten note: "of prison favors such as cigarettes"]
- 5) Deportation
- 6) Confiscation of property
- 7) Physical violence<sup>172</sup>

This last item is scratched out, as are many of the guide's more objectionable provisions. Thus, uneven handwriting "edits" the text such that "Coercive techniques always require prior HQs approval" becomes "Coercive techniques constitute an impropriety and violate policy."<sup>173</sup> These sloppy amendments, so clearly afterthoughts (perhaps added when the book was released), tell us much about our government's approach to human rights: Leave the rough stuff in place, and just deny it when the time comes.

#### **WHAT INTERNATIONAL LAW?**

Anyone concerned with political reality is forced to admit that the concept of "international law" is, at present, little more than a polite fiction. As its institutions are weak and its enforcement inadequate, its demands resemble less those of law than of intergovernmental etiquette or, at the very most, of humanitarian ethics. In terms of

realpolitik, Reagan's UN ambassador, Jeane Kirkpatrick, was right in her estimation that the Universal Declaration of Human Rights is essentially only "a letter to Santa Claus."<sup>174</sup>

Worse, international law in practice usually represents a kind of victors' justice. As Noam Chomsky explains, "A crime is a war crime if the Germans committed it and we [the Allies] didn't."<sup>175</sup> Failed aggressors suffer for their crimes; weak states are punished for atrocities. Victory is its own defense, the best defense. Power brings immunity.

The US record, both before and after September 11, illustrates this principle as well as anything else.<sup>176</sup> Consider:

- In June 1986, the International Court of Justice declared US actions against the Sandinistas to be "an unlawful use of force." The US responded by denying the court's jurisdiction, voting against a UN General Assembly resolution calling for compliance with the ruling, and vetoing a Security Council resolution calling on all states to observe international law.<sup>177</sup>

- In December 1987, the UN passed a resolution condemning terrorism and calling on nations to stop supporting it. The US and Israel voted against the resolution, in part because it contained a provision recognizing the right to resist foreign occupation.<sup>178</sup>

- On February 27, 1991, the first President Bush publicly declared that the US military would give "no quarter" to Iraqi soldiers, thus violating the laws of war as they've been understood since the 1907 Hague Convention.<sup>179</sup>

- In May 1997, the US Senate passed an act to implement the Convention on the Prohibition on the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction—with one proviso, namely, that "the President may deny a request to inspect any facility in the United States."<sup>180</sup>

Meanwhile, the US government is in arrears more than \$92.6 million to the International Labor Organization and \$1.3 billion to the United Nations.<sup>181</sup> It steadfastly refuses to sign the Ottawa Land Mine Treaty or to recognize the International Criminal Court.<sup>182</sup> And it has openly defied the Nuclear Non-Proliferation Treaty and actually has withdrawn from the 1972 Anti-Ballistic Missile Treaty.<sup>183</sup> All while solemnly lecturing Iran, Syria, and North Korea about their international obligations.

Despite its ineffectuality, international law does provide a standard for measure, since its requirements are generally accepted in principle, even if they are commonly disregarded in practice. Outright rejection of the standards shows a country to be out of step



with the international community. But violations of one's treaty obligations show that a country has offended not only the standards of its neighbors, but its own standards as well.

The US sometimes treads both paths simultaneously. In the run-up to the invasion of Iraq, for example, the Bush administration invoked UN resolutions and the spirit of international law, *and* explicitly conveyed its intention to disregard the same. This view—that one may violate the law so to enforce it, that one may be justified by principles without being bound by them—politically amounts to a claim of sovereignty, in this case, global sovereignty.

Sovereignty, in the Hobbesian sense, stands in stark contrast to liberal conceptions of the rule of law.<sup>184</sup> The sovereign, by definition, stands above the law, and it is only through his exercise of power that the law becomes real for those subject to it. Thus the US—like a king among nations—exempts itself from the standards it seeks to impose on others, from the laws it claims to enforce. Moreover, our presidents (and not just Bush) seek to circumvent, or nullify, or plainly ignore laws that might diminish their power or limit the ends they can pursue. This is not just criminality. It is a philosophy of power.

It is also, in the normal moral sense, simple hypocrisy. But Bush tempers his hypocrisy with an almost regal arrogance and an odd sense of sacred mission. He seems to see unilateral action as a sign of resolve and the willingness to disregard the law (not to mention world public opinion) as a supreme virtue. This attitude, I am sorry to say, is not uniquely the president's. It is, instead, a prominent feature of our national character, so prominent that there already exists a term for it: American Exceptionalism.

We are powerful, it is believed, because we are so good. And because we are both so powerful and so good, the usual rules do not apply to us. Thus our goodness comes to justify a great deal of evil. Our actions are good, we tend to think, because *we* do them.

"No one," James Baldwin warned, "is more dangerous than he who imagines himself pure in heart: for his purity, by definition, is unassailable."<sup>185</sup>

## IMPERIAL IMPERATIVES

The first aim of power is to preserve itself. The US government has been quite clear about its intentions in this regard.

Reflecting the United States's hopes for the new post-cold war era, the 1992 document "Defense Planning Guidance for the Fiscal Years 1994–1999" states clearly,

Our first objective is to prevent the re-emergence of a new rival. ... [We] must account sufficiently for the interests of the advanced industrial nations to discourage them from challenging our leadership or seeking to overturn the established political and economic order. ... We must maintain the mechanisms for deterring political competitors from even aspiring to a larger regional or global role.<sup>186</sup>

Amplifying the rhetoric in light of the 9/11 attacks, the White House "National Security Strategy" of September 2002 continues the theme and outlines the logic of preemptive war:

Our forces will be strong enough to dissuade political adversaries from pursuing a military build-up in hopes of surpassing, or equaling, the power of the United States. ... America will act against such emerging threats before they are fully formed. ... We must deter and defend against the threat before it is unleashed. ... We cannot let our enemies strike first. ... To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.<sup>187</sup>

These two documents articulate a vision of the US role in the global political order. If we consider them together with the historical record, we are rewarded with a view of America as Empire. The unrivaled superpower, the US places itself beyond any challenge and above any law.

Empire, in its present form, relies less on the control of territory or the creation of colonies than on the disciplining of other governments (and, usually indirectly, their populations).<sup>188</sup> From the perspective of political realism (as it is cynically called), this project must seem like a good in itself. States inherently seek to retain and expand their influence; increased power doesn't just serve the interests of the state, it defines those interests. Thus, imperialism does not reduce to economics, any more than it reduces to simple militarism. But it does contain an economic component, since those with the most influence over the imperial government—including many large US corporations—are naturally going to help set its agenda. Hence the US government selectively protects American companies while seeking to subject foreign corporations to the rigors of the market. Hence also, the perfect marriage of military force and corporate welfare in occupied Iraq.

So long as the maintenance of an empire requires sacrifices on the part of the US public, ideology will also have an important

role to play. American Exceptionalism can only be preserved with a combination of historical ignorance and nationalist arrogance. The belief in our cultural superiority necessarily implies a belief in the inferiority of others. Racism thus underlies the ideology of empire and shapes its enforcement practices. People of color become the usual—and worse, the accepted—victims of state violence, both overseas and at home.

This choice of victims is partly a matter of simple bullying. The state targets people who are already relatively powerless;<sup>189</sup> by attacking them it keeps them powerless, while sending a message to any potential adversaries. As power builds on itself, it becomes hard to say exactly where the means stop and the ends begin. At home and abroad, the use of force in the service of exceptionalism and empire follows the logic of political terrorism.

#### NOTES

- <sup>1</sup> Jackson Diehl, "How Torture Came Down From the Top," *Washington Post*, August 27, 2004.
- <sup>2</sup> Jane Mayer, "Outsourcing Torture: The Secret History of America's 'Extraordinary Rendition' Program," *New Yorker*, 14 February 2005 and 21 February 2005, 112.
- <sup>3</sup> Alberto R. Gonzales, "Memorandum for the President, Decision RE Application of the Geneva Convention on Prisoners of War to the Conflict With Al Qaeda and the Taliban" (January 25, 2002), in *Torture and Truth: America, Abu Ghraib, and the War on Terror*, by Mark Danner, (New York: New York Review Books, 2004), 86.
- <sup>4</sup> Ward Churchill, *On the Justice of Roosting Chickens: Reflections on the Consequences of US Imperial Arrogance and Criminality* (Oakland, CA: AK Press, 2003), 201. Algeria, Brazil, China, Colombia, Ethiopia, Malaysia, Nepal, Senegal, the USSR, and Yugoslavia voted in favor of the resolution. Canada, France, the United Kingdom, and the United States voted against it. Finland abstained.
- <sup>5</sup> Both quoted in Noam Chomsky, *Rogue States: The Rule of Force in World Affairs* (Cambridge, MA: South End Press, 2000), 13.
- <sup>6</sup> Quoted in Chomsky, *Rogue States*, 14.
- <sup>7</sup> Quoted in David C. Whitney and Robin Vaughn Whitney, *The American Presidents*, 8<sup>th</sup> ed. (Garden City, NY: Guild America Books, 1997), 53.
- <sup>8</sup> Quoted in Howard Zinn, *A People's History of the United States, 1492–Present* (New York: HarperPerennial, 1995), 417.
- <sup>9</sup> Zinn, *A People's History*, 417–418.
- <sup>10</sup> Quoted in William Blum, *Killing Hope: US Military and CIA Interventions Since World War II*, updated edition (Monroe, ME: Common Courage Press, 2004), 338.

- <sup>11</sup> Noam Chomsky, "Rogue States," in *Acts of Aggression: Policing "Rogue States,"* (New York: Seven Stories Press, 1999), 42.
- <sup>12</sup> Ellen Knickmeyer and Omar Fekeiki, "Sunni Arabs Tell of Abuse at Secret Iraqi Prison," *Washington Post*, November 17, 2005.
- <sup>13</sup> Quoted in Omar Fekeiki, "Torture Alleged After US-Led Raid Uncovers Iraqi-Run Prison," *Washington Post*, November 16, 2005.
- <sup>14</sup> Elten Knickmeyer and K. I. Ibrahim, "US. to Probe All Iraqi-Run Prisons," *Washington Post*, November 18, 2005.
- <sup>15</sup> Photographs taken through the sniper's rifle sight later appeared in the *Oregonian* newspaper. A front-page photo showed a blindfolded prisoner lying on the ground, surrounded by men in civilian clothing. One man is holding a stick and rolling up his sleeves. A police vehicle is clearly visible in the background. Mike Francis, "Ordered to Just Walk Away," *Oregonian*, August 8, 2004.
- <sup>16</sup> Francis, "Ordered to Just Walk Away." This incident demonstrates how little it matters what the individual soldiers want, or what they think of what they are doing. Their best efforts, and their most sincere humanitarian impulses, are easily lost in the context of the occupation and overwhelmed by institutional forces that they do help maintain but cannot control. The National Guard sniper forced the hand of his commanders, and his comrades were troubled by what they saw in the police station. They were angered by the order to stand down, but they did obey it—though at least a few went on to violate their orders and notify the media.
- <sup>17</sup> Quoted in Amnesty International, "United States of America: Human Dignity Denied: Torture and Accountability in the 'War on Terror'" (October 27, 2004). During a hearing on the incident, Colonel David A. Teeple, the commander of the Third Armored Cavalry Regiment testified that "claustrophobic technique[s]" had been approved for use in interrogations. Quoted in Josh White, "Documents Tell of Brutal Improvisation by GIs," *Washington Post*, August 3, 2005.
- <sup>18</sup> Quoted in White, "Documents Tell of Brutal Improvisation."
- <sup>19</sup> Solomon Moore and Scott Gold, "California Unit Tied to Elite Iraqi Force," *Los Angeles Times*, July 28, 2005.
- <sup>20</sup> Knickmeyer and Fekeiki, "Sunni Arabs Tell of Abuse."
- <sup>21</sup> Knickmeyer and Ibrahim, "U.S. to Probe All Iraqi-Run Prisons."
- <sup>22</sup> Quoted in Dana Priest and Joe Stephens, "Secret World of US Interrogations," *Washington Post*, May 11, 2004.
- <sup>23</sup> Priest and Stephens, "Secret World."
- <sup>24</sup> All of these countries have been cited by the US State Department for human rights abuses. Mayer, "Outsourcing Torture," 107.
- <sup>25</sup> Quoted in Priest and Stephens, "Secret World."

- <sup>26</sup> Mayer, "Outsourcing Torture," 106–107. Former CIA director George Tenet told the 9/11 Commission that between 1995 and 2001, the agency perpetrated 70 such renditions. "Torture by Proxy," *New Yorker Online*, February 8, 2005, [http://www.newyorker.com/online/content/articles/050214on\\_lineonly01](http://www.newyorker.com/online/content/articles/050214on_lineonly01) (accessed February 10, 2005).
- <sup>27</sup> Herbert P. Bix, "Torture, Racism, and the Sovereign Presidency," *Z Magazine*, July/August 2005, 47.
- <sup>28</sup> Human Rights Watch, "United States: Stop Handing Over Detainees to Torturers" (November 7, 2003); Human Rights Watch, "The Road to Abu Ghraib" (June 2004); and Priest and Stephens, "Secret World."
- <sup>29</sup> Quoted in Mayer, "Outsourcing Torture," 106.
- <sup>30</sup> *Ibid.*, 107. Congress thus incorporated into domestic law the standards of the Convention Against Torture. Article 3 explicitly prohibits sending a person to another country "where there are substantial grounds for believing that he would be in danger of being subjected to torture." Quoted in Human Rights Watch, "The Legal Prohibition Against Torture" (June 1, 2004).
- <sup>31</sup> Mayer, "Outsourcing Torture," 107.
- <sup>32</sup> Quoted in Kalla Fakta, "Script: The Broken Promise, Part Four; TV4, Monday 22 November 2004 [English translation]," <http://tv4.se/nyheter/kallafakta/339558.html> (accessed March 30, 2005).
- <sup>33</sup> Quoted in Human Rights Watch, "The United States' 'Disappeared.' The CIA's Long-Term 'Ghost Detainees'" (October 2004).
- <sup>34</sup> Quoted in Walter Pincus, "Newly Released Data Undercut Prewar Claims," *Washington Post*, November 6, 2005.
- <sup>35</sup> Mayer, "Outsourcing Torture," 116.
- <sup>36</sup> Pincus, "Newly Released Data Undercut Prewar Claims."
- <sup>37</sup> Quoted in Mayer, "Outsourcing Torture," 116.
- <sup>38</sup> Quoted in Pincus, "Newly Released Data Undercut Prewar Claims."
- <sup>39</sup> Quoted in Mayer, "Outsourcing Torture," 111. Other officials defend the legality of the program, pointing to a September 17, 2001 presidential order authorizing the CIA to kill, capture, and detain al-Qaeda operatives anywhere in the world. Dana Priest, "CIA Holds Terror Suspects in Secret Prisons: Debate Is Growing Within Agency About Legality and Morality of Overseas System Set Up After 9/11," *Washington Post*, November 2, 2005.
- <sup>40</sup> Human Rights Watch, "The United States' 'Disappeared.'"
- <sup>41</sup> Dana Priest, "Wrongful Imprisonment: Anatomy of a CIA Mistake," *Washington Post*, December 4, 2005.
- <sup>42</sup> Khaled El-Masri, "America Kidnapped Me," *Los Angeles Times*, December 18, 2005.
- <sup>43</sup> Priest, "Wrongful Imprisonment."
- <sup>44</sup> Priest, "CIA Holds Terror Suspects in Secret Prisons."



- <sup>45</sup> Priest and Stephens, "Secret World." Human Rights Watch has identified 26 high-level suspects held secretly by the United States at undisclosed locations. Human Rights Watch, "U.S. Holding at Least Twenty-Six Ghost Detainees" (December 1, 2005).
- <sup>46</sup> Amnesty International, "USA: Human Dignity Denied"; Human Rights Watch, "Human Rights Watch Statement on U.S. Secret Detention Facilities in Europe" (November 7, 2005). The Thai facility was closed in June 2003 after being exposed in press reports. Priest, "CIA Holds Terror Suspects in Secret Prisons."
- <sup>47</sup> The desire to dodge such oversight seems to be a major consideration. In 2004, the CIA closed its small facility at Guantánamo Bay because of the courts' growing influence there. Priest, "CIA Holds Terror Suspects in Secret Prisons."
- <sup>48</sup> The fault lines are not always predictable. It seems that Sweden's governmental ministers voted to surrender two refugees—Muhammed Zery and Ahmed Agiza—to the US, who then shipped them to Egypt. On the other hand, an Italian magistrate recently issued 22 arrest warrants against CIA operatives involved with the kidnapping of Osama Mustafa Hassan Nasr. Nasr, a radical cleric, was kidnapped outside a Milan mosque, sent to Egypt, and tortured with electroshocks. Among those facing arrest is former CIA station chief Robert Seldon Lady. Charles M. Sennot, "Italy Seethes at US Abduction of Imam," *Boston Globe*, July 3, 2005; and Tracy Wilkinson, "Ex-CIA Agent in Milan Asks for Immunity," *Los Angeles Times*, December 5, 2005.
- <sup>49</sup> Human Rights Watch, "The United States' 'Disappeared'"; and Amnesty International, "Human Dignity Denied."
- Unnamed intelligence agents also told *ABC News* of six "Enhanced Interrogation Techniques" approved in March of 2002:
1. *The Attention Grab*: The interrogator forcefully grabs the shirt front of the prisoner and shakes him.
  2. *Attention Slap*: An open-hand slap aimed at causing pain and triggering fear.
  3. *The Belly Slap*: A hard open-hand slap to the stomach. The aim is to cause pain, but not internal injury. ...
  4. *Long Time Standing*: This technique is described as among the most effective. Prisoners are forced to stand handcuffed and with their feet shackled to an eye bolt in the floor for more than 40 hours. Exhaustion and sleep deprivation are effective in yielding confessions.
  5. *The Cold Cell*: The prisoner is left to stand naked in a cell kept near 50 degrees. Throughout the time in the cell the prisoner is doused with water.

6. *Waterboarding*: The prisoner is bound to an inclined board, feet raised and head slightly below the feet. Cellophane is wrapped over the prisoners face and water is poured over him. Unavoidably, the gag reflex kicks in and a terrifying fear of drowning leads to almost instant pleas to bring the treatment to a halt."

CIA agents who volunteered to undergo waterboarding could hold out, on average, 14 seconds. Mohammed earned the admiration of his interrogators by withstanding it for more than two minutes. Brian Ross and Richard Esposito, "CIA's Harsh Interrogation Techniques Described," *ABC News*, November 18, 2005, <http://abcnews.go.com/WNT/Investigation/story?id=1322866&page=1> (accessed December 1, 2005). For more detailed descriptions of these techniques, see Human Rights Watch, "Descriptions of Techniques Allegedly Authorized by the CIA," (November 21, 2005).

<sup>50</sup> Eyal Press, "In Torture We Trust?" in *Civil Liberties Vs. National Security in a Post-9/11 World*, ed., Katherine B. Darmer et al. (Amherst, NY: Prometheus Books, 2004) 227.

<sup>51</sup> Douglas Jehl, "Report Warned CIA on Tactics in Interrogation," *New York Times*, November 9, 2005.

<sup>52</sup> Padilla, a US citizen, was arrested at O'Hare airport on May 8, 2002, and held without charges as an "illegal combatant" for more than three years. When the Justice Department finally brought charges against Padilla, in November 2005, the indictment made no mention of al-Qaeda or of the famous radiological "dirty bomb." Instead, Padilla was accused of being part of a "support cell" that provided funds to jihadists in Afghanistan, and of applying to attend a training camp. Had the dirty bomb appeared in the indictment, Padilla's lawyers would surely have sought to examine the government's witnesses—specifically Khalid Shaikh Mohammed and Abu Zubaydah. The Bush administration likely felt compelled to issue formal criminal charges, in an effort to head off Padilla's appeal to the Supreme Court. But the administration remained reluctant to let Mohammed or Zubaydah take the stand, in part because they might testify as to their treatment during capture, custody, and interrogation. Eric Lichtblau, "In Legal Shift, U.S. Charges Detainee in Terrorism Case," *New York Times*, November 23, 2005; and Douglas Jehl and Eric Lichtblau, "Shift on Suspect Is Linked to Role of Qaeda Figures," *New York Times*, November 24, 2005.

A *New York Times* editorial pointed out: "The Padilla case was supposed to be an example of why the administration needs to suspend prisoners' rights when it comes to the war on terror. It turned out to be the opposite. If Mr. Padilla was seriously planning a 'dirty bomb' attack, he can never be held accountable for it in court because the illegal condi-

tions under which he has been held will make it impossible to do that. If he was only an inept fellow traveler in the terrorist community, he is excellent proof that the government is fallible and needs the normal checks of the judicial system. And, of course, if he is innocent, he was the victim of a terrible injustice." "Um, About That Dirty Bomb? [editorial]" *New York Times*, November 23, 2005.

<sup>53</sup> Quoted in Human Rights Watch, "The United States' 'Disappeared.'"

<sup>54</sup> *Ibid.*

<sup>55</sup> Quoted in Olivia Rousset, "Lifting the Hood: The Prisoners of Abu Ghraib," *Dateline*, SBS, November 9, 2005. <http://news.sbs.com.au/dateline/index.php?page=archive&daysum=2005-11-09#> (accessed November 15, 2005).

<sup>56</sup> Human Rights Watch, "The United States' 'Disappeared.'"

<sup>57</sup> Dana Priest and Bradley Graham, "US Struggled Over How Far to Push Tactics: Documents Show Back-and-Forth on Interrogation Policy," *Washington Post*, June 24, 2004.

<sup>58</sup> Quoted in Dana Priest, "Ex-CIA Official Defends Detention Policies," *Washington Post*, October 27, 2004.

<sup>59</sup> Human Rights Watch, "The United States' 'Disappeared.'"

<sup>60</sup> Quoted in Bradley Graham and Josh White, "General Cites Hidden Detainees," *Washington Post*, September 10, 2004.

<sup>61</sup> *Ibid.*

<sup>62</sup> Here, and in the chapters that follow, I concentrate on the period since 1980. I believe this period is long enough to put current events in a broader historical context, but not so long that any of the particular cases I discuss can be dismissed as historically remote. (For instance, the events under discussion occurred *after* the reforms brought on by the Watergate scandal and the Church Committee hearings of the 1970s.) Also, the period since 1980 has seen the simultaneous intensification and consolidation of several trends, including prison expansion, neoliberal economics, and the "War on Terror" and the "War on Drugs" (both of which were initially declared by President Reagan). While the book has thus far focused on the US government's use of torture overseas, the chapters following will also consider its domestic practices.

<sup>63</sup> Noam Chomsky, *Power and Terror: Post 9-11 Talks and Interviews*, ed. John Junkerman and Takei Masakazu (New York: Seven Stories Press, 2003), 61–62.

<sup>64</sup> Stephen J. Hedges, "US Must Do a Better Job of Picking Friends," *Chicago Tribune*, August 1, 2004.

This amount comprised 17 percent of all US aid, and constituted 20 percent of the total Israeli defense budget. Frida Berrigan and William D. Hartung, "US Weapons at War 2005: Promoting Freedom or Fueling Conflict?; U.S. Military Aid and Arms Transfers Since September

11: A World Policy Institute Special Report," June 2005, <http://www.worldpolicy.org/projects/arms/reports/wawjune2005.html> (accessed December 15, 2005).

<sup>65</sup> Phyllis Bennis, "Of Dogs and Tails: The Changing Nature of the Pro-Israeli Lobby, the Unchanging Nature of the US-Israeli Alliance," in *Wrestling With Zion: Progressive Jewish-American Responses to the Israeli-Palestinian Conflict*, ed. Tony Kushner and Alisa Solomon (New York: Grove Press, 2003), 123.

<sup>66</sup> *Ibid.*, 121. Since 2003, Israel has sent advisers to Iraq and Fort Bragg, North Carolina, to train US assassins. Bix, "Torture, Racism, and the Sovereign Presidency," 50.

<sup>67</sup> For an overview of this history, see Eitan Felner, "Torture and Terrorism: Painful Lessons From Israel," in *Torture: Does It Make Us Safer? Is It Ever OK? A Human Rights Perspective*, ed. Kenneth Roth and Minky Worden (New York: New Press and Human Rights Watch, 2005).

<sup>68</sup> Quoted in David McDowall, *Israel and Palestine: The Uprising and Beyond* (Berkeley: University of California Press, 1989), 7.

<sup>69</sup> *Ibid.*, 6–7.

<sup>70</sup> Quoted in Amnesty International, *Combating Torture: A Manual for Action* (London: Amnesty International, 2003), 25.

<sup>71</sup> *Ibid.*, 25. For my discussion of "ticking time bomb" cases, see Chapter 3.

<sup>72</sup> Amnesty International, *Combating Torture*, 25.

"Among the investigation methods outlined in the GSS' interrogation regulations, shaking is considered the harshest. The method is defined as the forceful shaking of the suspect's upper torso, back and forth, repeatedly, in a manner which causes the neck and head to dangle and vacillate rapidly. According to an expert opinion submitted in one of the applications, the shaking method is likely to cause serious brain damage, harm the spinal cord, cause the suspect to lose consciousness, vomit and urinate uncontrollably and suffer serious headaches. ... In one particular case the suspect in question expired after being shaken. According to the State, that case constituted a rare exception." Supreme Court of Israel, "Judgment Concerning the Legality of the General Security Service's Interrogation Methods (September 6, 1999)," in *Torture: A Collection*, ed. Sanford Levinson (Oxford: Oxford University Press, 2004), 166.

<sup>73</sup> B'Tselem: The Israeli Center for Human Rights in the Occupied Territories, *Routine Torture: Interrogation Methods of the General Security Service* (Jerusalem: February 1998), 8. This volume provides a full description of common Israeli techniques.

<sup>74</sup> Quoted in Amnesty International, "State Injustice: Unfair Trials in the Middle East and Northern Africa" (April 1998), 21–22.

<sup>75</sup> Amnesty International, *Combating Torture*, 26–27.

<sup>76</sup> Quoted in Amnesty International, *Combating Torture*, 28.

<sup>77</sup> Ibid., 29.

<sup>78</sup> Supreme Court of Israel, "Judgment," 173–176.

<sup>79</sup> Ibid., 181.

<sup>80</sup> Churchill, *On the Justice of Roosting Chickens*, 248.

<sup>81</sup> Rashid Khalidi, *Resurrecting Empire: Western Footprints and America's Perilous Path in the Middle East* (Boston: Beacon Press, 2004), 142–145, 147.

<sup>82</sup> Quoted in *ibid.*, 148.

<sup>83</sup> Amnesty International, *Combating Torture*, 30.

<sup>84</sup> Quoted in [Yuval Ginbar,] *Back to a Routine of Torture: Torture and Ill-Treatment of Palestinian Detainees During Arrest and Interrogation, September 2001–April 2003*, trans. Jessica Bonn (n.p.: Public Committee Against Torture in Israel, n.d.), 67.

<sup>85</sup> Glenn Frankel, "Prison Tactics a Longtime Dilemma for Israel: Nation Faced Issues Similar to Abu Ghraib," *Washington Post*, June 16, 2004.

<sup>86</sup> Ginbar, *Back to a Routine of Torture*, 8.

<sup>87</sup> Ibid., 47.

<sup>88</sup> Ibid., 9–10. The Public Committee Against Torture in Israel writes: "Official data indicate that at any given moment, there are at least 200 Palestinian detainees in GSS interrogation facilities. To these can be added several dozen detainees, and perhaps more, who are interrogated by GSS agents in other places and by bodies who work under GSS auspices, such as the Judea and Samaria Police 'Hostile Terrorist Activities' unit, and the units of Palestinian collaborator[s] in various prison facilities whose job is to induce detainees to talk ("*medovevim*"). The Public Committee Against Torture in Israel estimates that during the first half of 2003, the total number of people interrogated by the GSS and organizations operating on its behalf reaches the several hundreds per month. Based on the research conducted in preparation of this report, we estimate that the rate of interrogees in the sample against whom no method of ill-treatment whatsoever was used is negligible. ... The Public Committee Against Torture in Israel estimates that a considerable portion, if not most of those interrogated, have been exposed to 'interrogation methods' that cause 'severe pain or suffering, whether physical or mental,' that is, methods that reach—at least in combination and in accumulation over time—the level of severity and cruelty that constitutes torture as defined in international law." Ibid., 21–22.

Again, there are no precise numbers for those tortured *apart* from interrogation. But the Red Crescent reports that between September 30, 2000, and December 11, 2005, 29,308 Palestinians had been injured in the second Intifada. Palestinian Red Crescent Society, "Table of Figures [Deaths and Injuries]," [http://www.palestinercs.org/crisistables/table\\_of\\_figures.htm](http://www.palestinercs.org/crisistables/table_of_figures.htm) (accessed December 16, 2005).



- <sup>89</sup> Amnesty International, *Combating Torture*, 31.
- <sup>90</sup> Ginbar, Back to a Routine of Torture, 89.
- <sup>91</sup> Hedges, "US Must Do a Better Job of Picking Friends."
- <sup>92</sup> The Cairo-based Human Rights Association estimates that in 2004 15,000 people were detained without charges. Human Rights Watch, "Human Rights Overview: Egypt," in *World Report 2005*.
- <sup>93</sup> Human Rights Watch, "Egypt's Torture Epidemic: A Human Rights Watch Briefing Paper" (February 2004).
- <sup>94</sup> Human Rights Watch, "Egypt's Torture Epidemic"; Scott Long, "When Doctors Torture: The Anus and the State in Egypt and Beyond," *Health and Human Rights* 7, no. 2 (2004): 114–140.
- <sup>95</sup> Quoted in Amnesty International, "State Injustice," 22.
- <sup>96</sup> Mayer, "Outsourcing Torture," 118.

Habib also says that, while he was tortured in Pakistan, he was questioned by men with American accents and civilian clothes. "Torture by Proxy," *New Yorker Online*.
- <sup>97</sup> Dana Priest and Dan Eggen, "Terror Suspect Alleges Torture," *Washington Post*, January 6, 2005; and Priest, "Wrongful Imprisonment."
- <sup>98</sup> Mayer, "Outsourcing Torture," 118.
- <sup>99</sup> Quoted in Alan Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (New Haven, CT: Yale University Press, 2002), 138.
- <sup>100</sup> Quoted in Blum, *Killing Hope*, 353. Approximately 2 percent of the population owned 60 percent of the land. John W. Sloan, "State Repression and Enforcement Terrorism," in *The State as Terrorist: The Dynamics of Governmental Violence and Repression*, ed. Michael Stohl and George A. Lopez (Westport, CT: Greenwood Press, 1984), 88.
- <sup>101</sup> Quoted in Blum, *Killing Hope*, 357.
- <sup>102</sup> Noam Chomsky, *The Culture of Terrorism* (Boston: South End Press, 1988), 26.
- <sup>103</sup> Blum, *Killing Hope*, 357.
- <sup>104</sup> Sloan, "State Repression," 88.
- <sup>105</sup> Amnesty International USA, "Human Rights & US Security Assistance," ed. Brian Best (May 1993), 14–15; Amnesty International, *Torture in the Eighties* (London: Amnesty International Publications, 1984), 155.
- <sup>106</sup> Quoted in Matthew Rothschild, "America's Amnesia," *Progressive*, July 2004, 27.
- <sup>107</sup> Quoted in Blum, *Killing Hope*, 359.
- <sup>108</sup> Blum, *Killing Hope*, 359.
- <sup>109</sup> Quoted in Blum, *Killing Hope*, 359.
- <sup>110</sup> Blum, *Killing Hope*, 359–360.
- <sup>111</sup> Quoted in Chalmers Johnson, *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic* (New York: Metropolitan Books, 2004), 126.

- <sup>112</sup> Chomsky, *The Culture of Terrorism*, 252.
- <sup>113</sup> *Ibid.*, 28–29. Emphasis in original.
- <sup>114</sup> Noam Chomsky, *The New Military Humanism: Lessons From Kosovo* (Monroe, ME: Common Courage Press, 1999), 52.
- <sup>115</sup> Paul J. White, *Primitive Rebels or Revolutionary Modernizers? The Kurdish National Movement in Turkey* (London: Zed Books, 2000), 170.
- <sup>116</sup> Quoted in Mark Muller, “Nationalism and the Rule of Law in Turkey: The Elimination of Kurdish Representation During the 1990s,” in *The Kurdish Nationalist Movement in the 1990s: Its Impact on Turkey and the Middle East*, ed. Robert Olsen (Lexington: The University Press of Kentucky, 1996), 179.
- <sup>117</sup> White, *Primitive Rebels or Revolutionary Modernizers?* 167–169.
- <sup>118</sup> Quoted in Amnesty International USA, “Turkey: Torture, Extrajudicial Executions, ‘Disappearances’” (May 1992), 11–12. Paragraph breaks added.
- <sup>119</sup> Jonathan Rugman and Roger Hutchings, *Ataturk’s Children: Turkey and the Kurds* (London: Cassell, 1996), 65.
- <sup>120</sup> White, *Primitive Rebels or Revolutionary Modernizers?* 162.
- <sup>121</sup> Rugman and Hutchings, *Ataturk’s Children*, 73.
- <sup>122</sup> Amnesty International USA, “Human Rights & US Security Assistance,” 57.
- <sup>123</sup> Rugman and Hutchings, *Ataturk’s Children*, 59–60 and 69.
- <sup>124</sup> Human Rights Watch, “Turkey: Human Rights Developments,” *World Report* 1994; and Human Rights Watch, “Turkey: Human Rights Developments,” *World Report* 1995.
- <sup>125</sup> Rugman and Hutchings, *Ataturk’s Children*, 65.
- <sup>126</sup> White, *Primitive Rebels or Revolutionary Modernizers?* 172.
- <sup>127</sup> By the end of 1997, 3,428 Kurdish villages had been forcibly evacuated and 2 million people displaced. White, *Primitive Rebels or Revolutionary Modernizers?* 172–173. By 1999, the Turkish government had 300,000 troops in the Kurdish region, and nearly 3 million people had been displaced. Chomsky, *The New Military Humanism*, 54–55.
- <sup>128</sup> Rugman and Hutchings, *Ataturk’s Children*, 19; Aid figures for 1993 from Amnesty International USA, “Human Rights & US Security Assistance,” 56.
- <sup>129</sup> Chomsky, *The New Military Humanism*, 58.
- <sup>130</sup> Quoted in Rugman and Hutchings, *Ataturk’s Children*, 19. Secret Pentagon documents leaked to the *London Observer* in September 2001 describe a system of “revolving alliances” centered around a three-country axis—the United States, the United Kingdom, and Turkey. Ellen Meiksins Wood, *Empire of Capital* (London: Verso, 2005), 145.
- <sup>131</sup> Noam Chomsky, *Rogue States: The Rule of Force in World Affairs* (Cambridge, MA: South End Press, 2000), 65.
- <sup>132</sup> *Ibid.*, 62.
- <sup>133</sup> Quoted in Chomsky, *Rogue States*, 151.
- <sup>134</sup> *Ibid.*, 72.

- <sup>135</sup> For example, in 1996, Colombian air force officers tried to smuggle heroin into the US using President Ernesto Samper's transport plane. Two years later, a Colombian air force cargo plane landed in Florida carrying 1,639 pounds of cocaine. William Blum, *Rogue State: A Guide to the World's Only Superpower* (Monroe, ME: Common Courage Press, 2000), 163.
- <sup>136</sup> Human Rights Watch, "Sixth Division: Military-Paramilitary Ties and US Policy in Colombia" (September 2001).
- <sup>137</sup> Stan Goff, *Full Spectrum Disorder* (Brooklyn, NY: Soft Skull Press, 2004), 31–32.
- <sup>138</sup> Quoted in Blum, *Rogue State*, 163. In one editorial the *Pittsburgh Post-Gazette* suggested some other reasons for our government's interest in the conflict: (1) the need to secure Occidental Petroleum's pipeline; (2) the profits Monsanto draws from the anti-coca defoliation project (plus, the \$3 million Monsanto gave the Republican Party in 2004); (3) the need to shore up the position of President Alvaro Uribe, "a conservative swimming against a growing tide of left-leaning presidents elected in Latin America"; and (4) the need for "a base for a possible invasion of neighboring Venezuela." "Junk This Plan [Editorial]," *Pittsburgh Post-Gazette*, May 2, 2005. <http://www.post-gazette.com/pg/05122/497563.stm> (accessed December 17, 2005).
- <sup>139</sup> Nazih Richani, *Systems of Violence: The Political Economy of War and Peace in Colombia* (Albany: State University of New York Press, 2002), 50.
- <sup>140</sup> Richani, *Systems of Violence*, 70, 123.
- Carlos Castano, a prominent paramilitary leader, stated on Colombian television that 70 percent of his organization's funds come from illegal drugs (as compared with 40 percent of the FARC's). Chomsky, *Rogue States*, 73; and Richani, *Systems of Violence*, 76.
- <sup>141</sup> Chomsky, *Rogue States*, 73.
- <sup>142</sup> Richani, *Systems of Violence*, 71; and Chomsky, *Rogue States*, 74.
- <sup>143</sup> Amnesty International, "Colombia: Amnesty International's Briefing to the UN Committee Against Torture on the Republic of Colombia" (November 2003). The World Policy Institute estimates that the conflict has killed 200,000 people and displaced 2 million. Berrigan and Hartung, "US Weapons at War 2005."
- <sup>144</sup> In 1991, for example, US military aid totaled \$28.2 million. Amnesty International USA, "Human Rights & US Security Assistance," 8.
- <sup>145</sup> Human Rights Watch, "Sixth Division."
- <sup>146</sup> Ibid.
- <sup>147</sup> Richani, *Systems of Violence*, 41.
- <sup>148</sup> Ibid., 45.
- <sup>149</sup> Ibid., 147.
- <sup>150</sup> Ibid., 131.
- <sup>151</sup> Ibid., 154.

- 152 Human Rights Watch, "Colombia Human Rights Certification IV" (September 10, 2002).
- 153 Amnesty International, "Colombia: Amnesty International's Briefing."
- 154 Human Rights Watch, "Sixth Division." "The principal reason that paramilitary groups have been able to continue their military offensive, characterized by widespread human rights violations, is that they benefit from the support and acquiescence of the security forces and frequently operate in coordination with them." Amnesty International, "Colombia: Amnesty International's Briefing."
- 155 Richani, *Systems of Violence*, 37.
- 156 Human Rights Watch, "Human Rights Overview: Colombia" (January 2004).
- 157 Center for International Policy, "Just the Facts: A Civilian's Guide to U.S. Defense and Security Assistance to Latin America and the Caribbean" (December 2, 2005), <http://www.ciponline.org/facts/co.htm> (accessed December 17, 2005).
- 158 Human Rights Watch, "Colombia," *World Report 2003*; and "Junk This Plan," *Pittsburgh Post-Gazette*.
- 159 Officially, the United States began providing the Colombian government with intelligence on the guerrillas in 1999. Human Rights Watch, "Colombia: Human Rights Developments."
- 160 School of Americas Watch, "What is the SOA?" <http://www.soaw.org/new/type.php?type=8> (accessed February 9, 2005).
- 161 School of Americas Watch, "SOA Country Sheets." <http://www.soaw.org/new/article.php?id=343> (accessed February 9, 2005).
- 162 Ibid.
- 163 Ibid.
- 164 Quoted in Barbara Jentzsch and Tom Johnson, "School of Americas Critic," *Progressive*, July 1997, 14.
- 165 Michel E. Werner, "Memorandum for the Secretary of Defense, Improper Material in Spanish-Language Intelligence Training Manuals" (March 10, 1992), <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/index.htm#hre> (accessed February 7, 2005), 2-3.
- 166 Ibid., 2.
- 167 Ray W. Pollari, "Memo for: Principal Deputy of Intelligence, Subject: USSOUTHCOM CI Training" (August 1, 1991), <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/index.htm#hre> (accessed February 7, 2005), 1.
- 168 Ibid.
- 169 Ibid.
- 170 Quoted in Jentzsch and Johnson, "School of Americas Critic," 14.

- <sup>171</sup> [Central Intelligence Agency], *Human Resource Exploitation Training Manual*-1983, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/index.htm#hre> (accessed February 7, 2005).
- <sup>172</sup> Ibid.
- <sup>173</sup> Ibid.
- <sup>174</sup> Quoted in Chomsky, *Rogue States*, 134.
- <sup>175</sup> Chomsky, *Power and Terror*, 21.
- <sup>176</sup> Chomsky's book *The Umbrella of US Power* offers a brief overview on the US status of noncompliance with the Universal Declaration, on the occasion of its fiftieth anniversary. Noam Chomsky, *The Umbrella of US Power: The Universal Declaration of Human Rights and the Contradictions of US Policy* (New York, Seven Stories Press, 1999). For a more exhaustive accounting, see Churchill, *On the Justice of Roosting Chickens*.
- <sup>177</sup> Chomsky, *The Culture of Terrorism*, 67–68.
- <sup>178</sup> Chomsky, *Power and Terror*, 110–111.
- <sup>179</sup> Churchill, *On the Justice of Roosting Chickens*, 208.
- <sup>180</sup> Quoted in Blum, *Rogue State*, 122.
- <sup>181</sup> Chomsky, *The Umbrella of US Power*, 28.
- <sup>182</sup> Churchill, *On the Justice of Roosting Chickens*, 237, 239, 241.
- <sup>183</sup> Johnson, *The Sorrows of Empire*, 77, 83, 290; and Noam Chomsky, *Hegemony or Survival: America's Quest for Global Dominance* (New York: Metropolitan Books, 2003) 233–234.
- <sup>184</sup> Thomas Hobbes wrote in *Leviathan*: "The Sovereign of a Commonwealth, be it an Assembly, or one Man, is not Subject to the Civill Lawes. For having power to make, and repeale Lawes, he may when he pleaseth, free himselfe from that subjection, by repealling those Lawes that trouble him, and making of new; and consequently he was free before. For he is free, that can be free when he will: Nor is it possible for any person to be bound to himselfe; because he that can bind, can release; and therefore he that is bound to himselfe onely, is not bound." Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1991), 184.

Judith Butler invokes this view while considering the implications of the existence of the Guantánamo Bay prison camp: "The present insistence by the state that law can and ought to be suspended gives us insight into a broader phenomenon, namely, that sovereignty is re-introduced in the very acts by which state suspends law, or contorts law to its own uses. ... Law itself is either suspended, or regarded as an instrument that the state may use in the service of constraining and monitoring a given population; the state is not subject to the rule of law, but law can be suspended or deployed tactically and partially to suit the requirements of a state that seeks more and more to allocate sovereign power to its executive and administrative powers." Judith



Butler, "Indefinite Detention" in *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004), 55.

<sup>185</sup> James Baldwin, "The Black Boy Looks at the White Boy," in *Collected Essays* (New York: The Library of America, 1998), 277.

<sup>186</sup> Quoted in Blum, *Killing Hope*, 383–384.

<sup>187</sup> *Ibid.*, 384.

<sup>188</sup> Wood writes: "That is the paradox of the new imperialism. It is the first imperialism in which military power is designed neither to conquer territory nor even to defeat rivals. It is an imperialism that seeks no territorial expansion or physical dominance of trade routes. Yet it has produced this enormous and disproportionate military capability, with an unprecedented global reach. It may be precisely because the new imperialism has no clear and finite objectives that it requires such massive military force. Boundless domination of a global economy, and of the multiple states that administer it, requires military action without end, in purpose or time." Wood, *Empire of Capital*, 144.

<sup>189</sup> "In Europe during two world wars the United States seems not to have stooped to officially ordering the torture and mistreatment of prisoners of war, though only because arrayed against it were fighting forces that held US prisoners and could retaliate. But in three Asian-Pacific wars—against Japan, North Korea, and the peoples of Indochina—the greater capabilities of US forces made the fighting far more one-sided. In World War II, victorious US troops in the Pacific confronted an enemy equipped with inferior weapons, usually took no prisoners, and often mutilated and murdered the wounded with impunity. The Japanese army too mistreated Allied prisoners and civilians on the battlefield and in occupied territories, but they alone were held criminally accountable for their actions. Vietnam and later interventions were unprovoked colonial wars against much weaker enemies. When going against the weak, the US military has invariably used torture tactics on a wide scale." Bix, "Torture, Racism, & the Sovereign Presidency," 52.

PART II

## BACK HOME

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## CHAPTER 5

# HOMELAND BRUTALITY

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ALMOST AT ONCE, WHEN the planes hit the Twin Towers, the state's repressive apparatus moved into overdrive.

At the beginning, its main targets were immigrants. In the four months following the September 11 attacks, the US secretly jailed about 1,200 people, mostly Arabs or Muslims from other countries. Of these, only one was charged with terror-related crimes, while 600 were charged instead with immigration violations. An unknown number of "material witnesses" were also jailed. (At least 45 have been identified in press reports.) Of those who were held without charges, many were transferred cross-country, and some were placed in solitary confinement.<sup>1</sup> A large portion were kept completely incommunicado and denied legal representation and family contact.<sup>2</sup>

While Attorney General John Ashcroft called the detainees "suspected terrorists," documents released under the Freedom of Information Act show that, of the first 725 arrested, 300 were of no interest to any terror-related investigation.<sup>3</sup> Still, the detainees were kept in jail until the authorities were convinced of their innocence; they were then either released or deported.<sup>4</sup> If, for legal reasons, they could not be deported, they could be held indefinitely, without trial.<sup>5</sup>

The trap is almost perfect: A general panic over terrorism is used to justify a broad sweep of targeted immigrant communities; the status of those arrested—the very fact that they are not citizens—then allows the side-stepping of the usual constitutional protections.<sup>6</sup> Counterterrorism provides a pretext for a wide-ranging dragnet; immigration law provides for the denial of due process. Unfettered by inconveniences like the presumption of innocence, our government is free to hold those it suspects of terrorist ties and to deport those it does not so suspect. Innocence, in this case, is no defense; status alone can warrant punishment.

While legally dubious, this abridgment of rights was politically and strategically quite sound. Immigration status commonly serves as a convenient proxy for race, offering an ostensibly colorblind

rationale for official scrutiny and harassment, the curtailment of individual rights, and all manner of discrimination in terms of employment, access to public services, and participation in civic life. At the same time, the entrenched practices of racial profiling and prejudiced notions about who “looks like” an immigrant practically guarantee that people of color will receive more than their share of unwanted state attention. Each half of this formula contributes to its political acceptance: the policy focuses on immigration status, thus avoiding charges of explicit racism, but the enforcement practices mostly affect people of color, thus preserving those privileges that white people think of as “rights.”

After September 11, this familiar strategy was applied, with renewed vigor, to people from (or thought to be from) the Middle East. But the institutions responsible for arrests and detention, and the practices they employ, predate the War on Terror. Official policy has become more aggressive, and the authorities have focused somewhat more of their attention against Arabs and Muslims, but none of this required a radical shift in the direction of government activity. Instead, it brought the preexisting patterns into sharper focus and signaled to functionaries at every level of government that they need not be concerned, even in principle, with the rights or dignity of those they have been ordered to control.

### “WELCOME TO AMERICA”

Eighty-four 9/11 detainees found themselves warehoused at the federal Bureau of Prisons’ Metropolitan Detention Center (MDC) in Brooklyn, New York.<sup>7</sup> There, according to the Justice Department’s inspector general,

some MDC staff members slammed and bounced detainees into the walls of the MDC and inappropriately pressed detainee’s [*sic*] heads against walls. ... Some officers inappropriately twisted and bent detainees’ arms, hands, wrists, and fingers, and caused them unnecessary physical pain; inappropriately carried or lifted detainees; and raised or pulled detainees’ arms in painful ways. ... Some officers inappropriately used handcuffs, occasionally stepped on compliant detainees’ leg restraint chains, and were needlessly forceful and rough with the detainees—all conduct that violates BOP policy.<sup>8</sup>



The inmates also complained that restraints and strip searches were used as punishment, and that guards banged on their cell doors to keep them awake nights, sometimes shouting obscenities and "Welcome to America."<sup>9</sup> At other times, guards called the prisoners "terrorists," "fucking Muslims," and "bin Laden Junior," threatening, "You're going to die here just like the people in the World Trade Center died."<sup>10</sup>

Video from the facility confirmed some of these allegations. For example, investigators from the office of the inspector general wrote, "We also saw staff members behave unprofessionally during strip searches. ... Staff members laughed, exchanged suggestive looks, and made funny noises before and during strip searches."<sup>11</sup>

Other tapes, those from the reception area to the Secure Housing Unit, showed a T-shirt hanging on one wall, featuring an American flag and the slogan THESE COLORS DON'T RUN. The shirt appears to be covered in bloodstains, the result of guards repeatedly throwing prisoners against the wall.<sup>12</sup>

One of those abused in the Metropolitan Detention Center was Benamar Benatta, an Algerian arrested on the pretext that his visa had expired. He complained of being threatened, mocked, forced to strip, and pushed forcefully into walls. Guards wrote "WTC" in chalk on his door, and knocked loudly every half hour to keep him from sleeping. Benatta was held in solitary, in a continuously lit cell without books, television, or access to a lawyer, for five months—even after the FBI cleared him of criminal charges. "In the box, I had no right to shave, to shower, nothing," he said. "You feel in there that one day is one month."<sup>13</sup>

Altogether, the inspector general reported that between 16 and 20 guards were involved in the abuse, and recommended discipline for 10 of them.<sup>14</sup> The guards' behavior did not seem to be part of any effort to enforce the rules or maintain public safety, or assist with interrogations. Rather, motivated by machismo and patriotic zeal, they had sought to send a message. As one MDC lieutenant explained, they wanted "to prove that they were men or prove that America was superior."<sup>15</sup>

The Bureau of Prisons has been at pains to present the MDC as an isolated case, a breakdown in discipline perhaps related to its proximity to Ground Zero. But conditions in other facilities hardly sound much better. Prisoners at Mecklenburg County Jail in Charlotte, North Carolina, told the American Arab Anti-Discrimination Committee that all Arab prisoners were stripped naked in a cold room. (The Mecklenburg Sheriff's Office denies it.)<sup>16</sup> A 41-year-old small business owner from Newbury, Massachusetts,

says that, while under interrogation by the INS and FBI, he went more than 24 hours without being given anything to eat; he, generously, is willing to believe his jailers just “forgot.”<sup>17</sup>

Court papers filed in the case of Osama Awadallah, who was held in the San Diego Metropolitan Correctional Center, state:

Defendant, who is an observant Muslim, was not allowed to have a Koran. For five days, he was denied Muslim *halal* food. ... He was not allowed a shower for the first three or four days, and was not allowed to have toilet paper for the first two days. For two days, his cell floor was flooded with water, preventing him from kneeling and praying.<sup>18</sup>

It is difficult to know for certain how much of this abuse represented an effort to specifically mistreat those caught in the nationwide terror dragnet, and how much it simply reflected the standard conditions in US jails and the usual practices of jail guards and immigration authorities. What is clear is that some of the basic strategies of repression—the use of racial profiling, Byzantine immigration procedures, arbitrary arrest, mass incarceration, and casual violence—were at once applied on a broader basis, against new victims, and with fewer limits. In this sense, the domestic wave of anti-Muslim torture and abuse (like the practices in Guantánamo Bay, Afghanistan, and Iraq) both reveals the nature of the institutions involved and tracks specific shifts in the attitudes of policy-makers and the rules they established.

#### THE PATRIOT ACT AND POLICY SHIFT

In the days following September 11, 2001, while the ruins of the World Trade Center smoldered, Congress was quick to expand the government’s powers of surveillance and detention. The main instrument in the legislative assault on civil rights was the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act.

The USA Patriot Act, which became law on October 26, 2001, broadened the definition of “terrorism” and formalized guilt by association, allowing the secretary of state to designate any group that has ever engaged in violence as a “terrorist organization.” Anyone who aids such a group—whether or not their assistance was connected to terrorism—could be subjected to wiretaps, secret searches, and possibly arrest.<sup>19</sup>

True to form, the Bush administration has used executive orders, administrative rules, and various legal memoranda to unilaterally extend its reach even further. This concerted push has damaged everyone's rights and undermined important constitutional protections. And predictably, it has most severely affected those who already suffered diminished rights—immigrants and, in practice, people of color especially. For instance, a November 17, 2001 Department of Justice rule authorized the INS in "emergency or extraordinary circumstances" to detain noncitizens without charges for an unspecified "reasonable period of time."<sup>20</sup>

An executive order from that same month authorized the use of military tribunals to try "enemy combatants," including US citizens.<sup>21</sup> This system could be seen to have its effect even before the tribunals were employed.<sup>22</sup> Ali Saleh Kahlal al-Marri, a Qatari studying computer science in Illinois, was initially arrested for minor crimes indirectly linked to terrorism. While he was awaiting trial, the state's case against him began to fall apart. Rather than go to court and risk an acquittal, the government simply declared al-Marri an enemy combatant and moved him to a military prison. Similarly, six Yemeni-Americans accused of aiding al-Qaeda decided to plead guilty after prosecutors suggested they might be declared enemy combatants if they continued to proclaim their innocence.<sup>23</sup>

The following year, the government created the National Security Entry-Exit Registration System. New rules required the registration of all men, including boys as young as 16 years old, from 20 countries—19 of them Arab or Muslim. The men were ordered to report to immigration authorities so they could be fingerprinted, photographed, and questioned. On December 16, 2002, when the system went into effect, the INS office in Los Angeles arrested about 400 people who were trying to comply with the rules. Most of those arrested were legal immigrants from Iran or Iraq.<sup>24</sup> Judging from their implementation, the new rules do not seem to have especially much to do with catching terrorists, or even with enforcing immigration law, but rather with intensifying the state's knowledge of and control over specifically targeted communities.

Those detained by the INS report being held in cold, overcrowded cells, without adequate food, water, or bathroom facilities. Behrooz Arshadi, for example, told of his confinement:

Though he didn't charge me with any crime, he handcuffed me and took me downstairs. They put me in what they called a "tank," and there were six such tanks. Inside, it was thirty-by-thirty, with eighty to ninety people

inside. It was so crowded. The tank had two benches next to the wall and two open toilets. There wasn't even space to sit. ...

They didn't tell us what they were doing, why we were there, why they detained us. And they didn't give us blankets or warm clothing or anything. It was very cold. ... The air conditioning was going all the time. People were shivering. No one had a bed to sleep on. You couldn't even sit.<sup>25</sup>

Many of the new rules, such as the registration of Middle Eastern men and the denial of constitutional protections for immigrants, are openly racist and xenophobic. These biases were implicitly incorporated into other policies, such as the decision not to apply the Geneva Conventions to al-Qaeda suspects or to the war in Afghanistan. By discounting the usual, universal requirements of human rights law and the rules of war, the Bush administration made the treatment of prisoners a matter of its sole discretion. It also, thereby, made imprisoned people more vulnerable to discriminatory treatment based on their race, nationality, or religion.

James Meek observes,

Bush's November 13 [2001] order refers to "enemy combatants" being "treated humanely, without any adverse distinction based on race, colour, religion, gender, birth, wealth, or any similar criteria." Yet it is hard to equate the starkly differing treatment of three men allegedly found fighting alongside the Taliban with this creed. The only white American in that category, John Walker Lindh, was given a criminal trial, the full panoply of legal rights, and swiftly sentenced. Another American citizen, but of Saudi descent, Yasser Hamdi, was moved from Guantánamo to a naval prison on the mainland US, and is still held there incommunicado as an "enemy combatant." Compare that to Mohamed Tariq, an ordinary Pakistani. ... There is no reason to think he did anything that Lindh or Hamdi did not do. But he remains in Guantánamo.<sup>26</sup>

Predictably, legal battles and bureaucratic infighting have put such rules in an state of long-term indeterminacy; they are obviously unconstitutional, but they will be enforced until the courts issue definitive rulings. Presidential orders, unlike official enemies, are innocent until proven guilty.

## AMERICA'S PRISON CULTURE

It is interesting to note that some supervisors at the Brooklyn Metropolitan Detention Center saw nothing at all unusual about the treatment of the 9/11 detainees. The inspector general recounts, "Lieutenant 1 stated that Lieutenant 2 told him that slamming detainees against the wall was *all part of being in jail* and not to worry about it."<sup>27</sup>

We have, to this point, considered torture and the treatment of prisoners—POWs, enemy combatants, ghost detainees, and terror suspects—in the context of the War on Terror. To get a fuller picture, however, we should also consider torture, prison conditions, and the state's coercive force as they exist in the routine operations of the US criminal justice system.

The prison is the central institution in the state's system of punishment.<sup>28</sup> And, with over 2 million Americans behind bars, and 4.9 percent of all African American men incarcerated at any given time, the experience of imprisonment is becoming less unusual, though it remains marginal almost by definition.<sup>29</sup>

Prison both confines its subjects and excludes them from society. Its tenants are invisible, its operations concealed. Yet both are exemplary—in a sense, omnipresent. As Glen Ford and Peter Gamble wrote in *The Black Commentator*,

Mass incarceration ... is an overarching reality that colors and distorts every aspect of African American political, economic and cultural life, smothering the human—and humane—aspirations of the community. ... We hear prison, talk prison, wear prison and—to a horrible degree—have become inured to the all enveloping presence of prison.<sup>30</sup>

To serve as a means of social control, the prison must always loom on the horizon. Yet the invisibility of the prison, its operations, and those it confines is crucial to the legitimacy of the institution. Notice how carefully the prison guards its secrecy. Investigative reporter Ted Conover was told that no journalists could observe the training of New York's corrections officers (a training he later endured, and described as a "hazing").<sup>31</sup> Human rights organizations and advocates for prisoners sometimes find themselves turned away at the gate when they try to inspect US jails.<sup>32</sup> Inmates who write about their conditions face administrative penalties and illegal abuse. And social scientists conducting surveys on prison violence report "direct bureaucratic interference" from prison staff.<sup>33</sup>



Such an aversion to transparency, especially in a government institution responsible for the total “care” of more than 2 million people, does not inspire confidence. But it is easy to understand. As prison life clashes so sharply with America’s self-image as the “sweet land of liberty,” it is essential that the respectable classes never confront the reality of the prison system, even as its imagery increasingly works its way into the foreground of our political discourse and entertainment culture.

Scandals, in this regard, are the exceptions that prove the rule. It is characteristic of the scandal, whether it be Watergate or Enron, My Lai or Abu Ghraib, that abuses surface, promote outcry, are denounced as aberrations, and are addressed through narrow investigations, the punishment of individual wrongdoers, and (perhaps) modest reforms. The spotlight shines so brightly on the *scandal*—its details and its peculiarities—that the routine operations, even the overall function, of the institutions involved are allowed to fade into the background, almost forgotten, ubiquitous and thus obscured. Individual abuses are unveiled and scrutinized, the immediate functionaries are chastised, but the systems behind them are not only left standing, but may even enjoy renewed prestige as a result of the ordeal. Scandal, like the priestly confession, absolves.

Historian Howard Zinn observes that, after Watergate,

There was ... a need to satisfy a disillusioned public that the system was criticizing and correcting itself. The standard way was to conduct a publicized investigation that found specific culprits but left the system intact. ... The resignation of Nixon, the succession of Ford, the exposure of bad deeds by the FBI and CIA—all aimed to regain the badly damaged confidence of the American people.<sup>34</sup>

We have seen a similar process enacted in response to Abu Ghraib—investigations launched, reports released, soldiers disciplined, officers relieved of command—while the broadest implications of the abuses elude official commentary and escape public notice. Such is the nature of scandal. We treat atrocities as accidents or, perhaps, as singular crimes, rather than seeing them as signs of deeper trouble. With this in mind, we should consider the domestic equivalent of Abu Ghraib—the Corcoran Prison scandal.

#### **CORCORAN: A STATESIDE ABU GHRAIB**

Between 1989 and 1995, 50 prisoners in the Secure Housing Unit of California’s Corcoran Prison were shot by guards, 7 of them fatally.

In the prison as a whole, there were 185 shooting incidents in 1990 alone, wounding 38 inmates; and there were 205 shootings in 1991, wounding 17.<sup>35</sup> The event that finally brought scrutiny to this pattern was the April 1994 death of Preston Tate.

Security cameras recorded Tate, a Black man serving time for robbery, entering a small recreation area. A few minutes later he was joined by two Latino members of a rival gang. Immediately, the three men began to fight. Guards fired less-lethal wooden bullets, followed by a single round from an assault rifle, which killed Tate. Soon thereafter, three guards went to the FBI telling of prearranged "cockfights" between gang members. Guards in Corcoran set these fights up, bet on them, and then ended them with gunfire.<sup>36</sup>

Other allegations quickly surfaced, many of them centering around a gang of guards, calling themselves "the Sharks," who greeted new inmates by beating them when they arrived.<sup>37</sup> Such institutionalized, but extra-legal, violence seems to have been the norm at Corcoran. Roscoe Pondexter, a former guard, has admitted to strangling prisoners while other guards crushed their testicles:

We called it Deep Six. It's like taking a dive underwater and not coming up. You give the prisoner only enough air to hear your message. ... It wasn't in the manual. It wasn't part of the official training. It was grandfathered to me by my sergeant and the sergeant before him.<sup>38</sup>

Among other time-tested practices, guards used violent prisoners to discipline those they found uncooperative or troublesome, especially through the use of rape. One of their favorite proxies was Wayne Robertson, a prisoner rewarded for his services with extra food and tennis shoes. As Pondexter explained: "Everyone knew about Robertson. He had raped [prisoners] before and he's raped [prisoners] since. ... The Booty Bandit was just one of the tools of punishment that we used."<sup>39</sup>

One person punished this way was Eddie Dillard, who was placed in a cell with Robertson and abandoned for two days. Dillard was raped repeatedly, while guards mocked his cries for help. He told the *LA Times*:

They took something away from me that I can never replace. I've tried so many nights to forget about it, but the feeling just doesn't go away. Every time I'm with my wife, it comes back to me what he did to me. I want a close to the story. I want some salvation. But it keeps going on and on.<sup>40</sup>

The Corcoran scandal prompted legislative hearings, a Department of Corrections investigation, and federal civil rights charges against eight guards. But in the end, the guards were acquitted and only the whistleblowers were forced out.<sup>41</sup>

## TWO, THREE, MANY CORCORANS

The conditions of Corcoran may have been somewhat worse than those in other, comparable prisons. But the abuses that surfaced in the scandal are characteristic of the prison system as a whole. The number of abuses may vary somewhat, but the type of abuse is a constant.

For example, at California's Pelican Bay State Prison, as at Corcoran, guards use live ammunition to break up fistfights. Prisoners are frequently hog-tied. Some have been beaten while in restraints. Verbal harassment is commonplace, often in a racist form. And, in scenes reminiscent of Camp X-Ray, prisoners have been left naked in outdoor cages, even during harsh weather.<sup>42</sup> One former guard has called Pelican Bay "the toilet of the corrections system."<sup>43</sup>

Perhaps most horrific—and most clearly qualifying as torture—is the treatment of the mentally ill, who are regularly beaten and have sometimes been locked in cages the size of telephone booths. When one mentally ill African American man, Vaughn Dortch, smeared his body with feces, the guards responded by forcibly removing him from his cell, throwing him in a bath of boiling water, and scrubbing him with a wire brush. Dortch suffered third-degree burns over 80 percent of his body.<sup>44</sup> A nurse who witnessed the incident said she heard of one of the guards joking, "It looks like we're going to have a white boy before this is through; his skin is so dirty and rotten it's all fallen off."<sup>45</sup>

Citing these and other abuses, inmates at Pelican Bay filed a class-action lawsuit in 1995 (*Madrid v. Gomez*). The judge's ruling went beyond discussion of this or that abuse, explicitly noting the systematic nature of the mistreatment. US District Court judge Thelton E. Henderson found that

the extent to which force is misused at Pelican Bay, combined with the flagrant and pervasive failures in [the prison's] systems for controlling the use of force reveals more than just deliberate indifference: they reveal an affirmative management strategy to permit the use of force for the purposes of punishment and deterrence.<sup>46</sup>

Incarcerated women endure many of the same abuses.<sup>47</sup> Women confined in the Michigan prison system, for example, have reported violent beatings, sexual assaults, unnecessarily intrusive searches, threats, and verbal harassment—as well as petty administrative tricks like fabricating misconduct reports and confiscating inmate mail. Patricia Hibbs, a former guard, told Amnesty International that she reported these conditions and was later attacked by an unidentified assailant in a secure, staff-only area of the prison.<sup>48</sup>

As one hears more about the things that happen to people in the custody of the state, comparisons between domestic prisons and those our government operates in Iraq start to sound less hyperbolic. My earlier description of Corcoran as a stateside Abu Ghraib is to some degree misleading: it would be more accurate to describe Abu Ghraib as a military Corcoran. For instance, two of the MPs charged with misconduct in Abu Ghraib had worked as corrections officers in the US. Major General Antonio M. Taguba, in his report on Abu Ghraib, implies that the military prison was dysfunctional, in part, because of the influence of these guards. Taguba wrote:

Without adequate training for a civilian internee detention mission, Brigade personnel relied heavily on individuals within the Brigade who had civilian corrections experience, including many who worked as prison guards or corrections officials in their civilian jobs.<sup>49</sup>

Prior to his assignment to Abu Ghraib, for instance, Charles Graner worked as a guard at the State Correctional Institution-Greene in Greene County, Pennsylvania. Greene earned its notoriety a few years ago after a dozen guards were fired for, among other things, sodomizing a prisoner with a nightstick and writing “KKK” on a cell floor, in blood, following a particularly brutal beating.<sup>50</sup> The authorities deny that Graner was involved in that scandal, but his employment record was anything but exemplary, and his reputation among inmates and guards alike was that of a sadistic thug. Both tell of Graner wearing fingerless black gloves with padded knuckles, and numerous witnesses remember him beating and mocking prisoners. (Guards also recall an incident from 1994 when he sprayed mace into a co-worker’s coffee.) While working at Greene County, Graner was reprimanded three times and suspended four times for lateness and absenteeism. He was also named in a lawsuit by Horatio Nimley, an inmate who, in 1998, had to be taken to the prison nurse after someone placed a razor in his mashed potatoes. The lawsuit states that guards first ignored his cries for help, and then beat him while he was being transported. It quotes Graner’s

response to Nimley's pleas for mercy: "Shut up, nigger, before we kill you."<sup>51</sup>

One fellow guard, Carl Opel, Jr., described Graner as "a jack-off," but also noted that Graner's behavior was just part of a larger institutional culture. "Did we kick people's asses in there?" Opel asks rhetorically. "Yes, we did. I'm not going to deny it."<sup>52</sup>

Graner's role in the Abu Ghraib scandal thus suggests an additional source for the abuses there. Just as policies, techniques, and personnel were brought to Iraq from Afghanistan and Guantánamo, so too, it seems that some similarly migrated there from the prisons in the homeland.

### STANDARDS OF CRUELTY

We might wish to dismiss prison abuses as anomalies, but the evidence is against it. While there are few reliable statistics measuring prison violence<sup>53</sup>, a 1989 nationwide survey conducted by Mark S. Hamm, Therese Coupez, Frances E. Hoze, and Corey Weinstein recorded a staggering array of allegations. The 605 inmate respondents reported

the use of mace, tear gas, Tasers, fire hoses, flashlights, riot batons, mop handles, rubber hoses, and wooden-bullet guns. Still others reported that prisoners had been dragged by the hair, dragged by a leash, or fired at with a shot gun. One prisoner reported being scalded with hot water by a guard; a paraplegic prisoner testified to being beaten unconscious by guards; two male prisoners reported homosexual rapes by guards; and one prisoner witnessed another prisoner hang himself to death while guards stood by laughing and watched.

A total of 25 female prisoners attested either to being beaten by male guards, being raped by male guards, or of being restrained to a bed naked and sexually ridiculed by guards. ...

Another 57 respondents reported what they called "hidden" physical abuse. These methods included setting up fights between prisoners by housing known enemies in the same cell or releasing enemies at the same time to a public area of the prison (referred to by guards as "dog fights" or "cockfights").<sup>54</sup>

This is not the way the criminal justice system is described in high school civics textbooks—or in the law. "Cruel and unusual punishment," in whatever form, is explicitly prohibited by the US



Constitution. And corporal punishment was officially abandoned in 1968 as a result of the *Jackson v. Bishop* ruling. (Prisoners in Arkansas objected to being beaten with a leather strap, and the courts intervened.)<sup>55</sup>

In *Rhodes v. Chapman* (1981), the Supreme Court refined its position, detailing specific conditions that violate the Eighth Amendment: (1) "the wanton and unnecessary infliction of pain," (2) "pain without any penological purpose," (3) "serious deprivation of basic human needs," and (4) deprivation of "the minimal civilized measure of life's necessities."<sup>56</sup> Any of these factors may, on its own, amount to a violation of an inmate's constitutional rights. In *Hudson v. McMillan* (1992), the Court, in a 7-2 vote, further specified that it is not the seriousness of the injury that defines a violation of rights, but "whether the force applied was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm."<sup>57</sup>

The Court did leave administrators some leeway, however. In *Wilson v. Seiter* (1991), it described a subjective component, "deliberative indifference," which must also be present for the courts to find a violation of constitutional rights. The Court further stipulated that, for force to be considered excessive, a guard must act "maliciously and sadistically for the very purpose of causing harm."<sup>58</sup> It took another step in this direction in *Farmer v. Brennan* (1994), when it decided that to meet the deliberate indifference standard, authorities must actually know about the risk of harm and then do nothing to address it. Ignorance, in this case, is a perfect excuse.<sup>59</sup>

## THE CORPORAL AND THE CARCERAL

The Court's ambivalence about the role of pain in punishment reflects the origins, development, and perhaps the very idea of the modern prison. It wasn't until the late eighteenth and early nineteenth centuries that imprisonment came to be considered a mode of punishment. Before that, jails merely held those waiting to be punished.

Reformers of the era promoted incarceration as an alternative to public executions and spectacles of torture. Under an absolute monarchy, the sovereign's might bore down visibly on the body of its adversary, physically destroying him. This drama of state power served as a warning to those who witnessed the ordeal. The alternative, perhaps better suited to a nation of republican laws, was the moral reformation of the delinquent's character through the im-

sition of a disciplined regime comprising solitude, sober reflection, and hard work.

Of course, as we've seen, the monastic ideal brought with it the ritual mortification of the flesh. But, Michel Foucault suggests, the purpose of torture had changed:

Physical pain, the pain of the body itself, is no longer the constituent element of the penalty. ... But a punishment like forced labor or even imprisonment—mere loss of liberty—has never functioned without a certain additional element of punishment that certainly concerns the body itself: rationing of food, sexual deprivation, corporal punishment, solitary confinement. ... In fact, in its most explicit practices, imprisonment has always involved a certain degree of physical pain. ... There remains, therefore, a trace of "torture" in the modern mechanisms of criminal justice—a trace that has not been entirely overcome, but which is enveloped, increasingly, by the non-corporal nature of the penal system.<sup>60</sup>

Foucault greatly overstates his case, exaggerating the extent to which incarceration has replaced physical pain in the state's coercive arsenal. He does acknowledge the physical (and physically painful) aspects of incarceration, but only to subordinate them to the aims of the reformatory ideal.

We can see a parallel in the Supreme Court decisions cited earlier. It is not all pain, nor all violence, that the Court seeks to prohibit—only that which is "wanton and unnecessary," "without any penological purpose." The Court's failure to hold to even this standard—offering exemptions for "good faith effort[s] to maintain or restore discipline" and for cases of official ignorance—demonstrate something of the gap between the ideals of the penitentiary's creators and the reality of power within the prison's walls.

It takes a certain measure of violence, of course, to deprive people of their liberty. But the success of this endeavor may only serve as an invitation to *further* violence. This is true both inside and outside of prison, on the streets of Harlem and in the "pacified" areas of Iraq. Power becomes not only a means, but an end. Its exercise through violence is preserved, officially, as a last resort; for those who use it, however, it becomes a constant temptation. The courts have tried to mark off the one from the other, to distinguish the legitimate uses and illegitimate abuses of authority. Their modest efforts restrict and regulate the sanctioned application of force while allowing officially prohibited practices to continue under a cover of plausible deniability. The courts seem to have internalized

their standards of "deliberate indifference": it's all okay, as long as we don't hear about it.

Still, given the legal prohibitions and the historical origins of the penitentiary, the persistence of physical violence and torture within prisons is in need of some explanation. Torture would seem to be both on the wrong side of the law and on the wrong side of history. How can we understand its survival?

Angela Davis astutely notes that the ideals informing the creation of the modern prison were in fact always rather limited in their application. She writes,

The penitentiary ... was conceived architecturally and theoretically as a plan for the moral reformation of the individual. As such, it expressed the overarching Enlightenment-age assumption that reason formed the core of every human being. ... [But] the putative universality of reason masked strong racial and gender assumptions about the bodies in which universal reason resided. During much of the nineteenth century, white women had no autonomous juridical status, and they were punished by their fathers, and wives were subjected to corporal punishment by their husbands. ... Until the abolition of slavery, most black men and women were under the authority of their slave masters, who developed punishment regimes designed simultaneously to inflict severe bodily pain and to safeguard the body as a laboring and thus profitable commodity. ... In this context, *punishment was entirely disarticulated from the goal of moral reformation.*<sup>61</sup>

In other words, the practices of the modern justice system incorporate these double standards based principally in the logic of white supremacy and male domination. At the dawn of the modern penal system, public law and due process governed white men, while women and Black people were additionally subject to domestic violence and the master's whip. Now, as then, the penalty's form is largely determined by the status of the offender—reason and reform for the privileged class, bodily pain for the others.

But this legacy has been a complex one. Police and prisons have replaced the plantation system in the governance of Black people, and much of that effort still depends crucially on the use of violence.<sup>62</sup> The control of women, meanwhile, remains largely in the private sphere—through the use of rape and domestic violence, as well as through cultural, economic, political, and psychological means. While the number of women in prison steadily increases,

and though they are subject to the same horrific abuses as male prisoners (though sometimes, as we shall see, in different form), the demographics of the prison population (183,400 women and 1,947,800 men)<sup>63</sup> pulls the discourse to concentrate on male prisoners, men's prisons, and the torture of men. This focus is justified, in one sense, by the numbers and by the sheer scale of the problem. But it is also ironic, since (as I shall argue) the system of male dominance and female subjugation, and the violence that sustains it, are crucial to the understanding of torture—regardless of the sex of the victim.

The prison is, and has always been, both highly racialized and highly gendered. As Davis suggests, the reformatory ideal initially excluded Black people and women; and as the prison has come to contain increasing numbers of both,<sup>64</sup> this ideal has been almost completely surrendered. The penitentiary is now viewed chiefly as a place for punishment, not rehabilitation.<sup>65</sup> Yet this shift, which came so easily, after all, may only mask a large continuity—that prisons and prison violence are not, or not mainly, responses to crime so much as they are blunt instruments for preserving the existing distribution of power.

### THE 81 SHAKEDOWN

The role of violence in underwriting the functions of the prison, and the use of torture and terror in controlling the inmate population, are particularly apparent when prison authorities feel that their authority is challenged.

December 14, 1981, marked the beginning of a bloody siege in Hawai'i's Oahu Prison. Termed the "81 Shakedown," the episode was a turning point in the history of the Hawai'i prison system. Before then, the Oahu Prison had been the site of almost constant unrest, and there was little pretense that the staff was in control. According to Michael Hess, a former unit manager at the prison, guards refused to enter dorm areas, inmates moved freely to and from the rec yard, and staff often called in sick when assigned to dangerous posts. In the summer of 1980, the prison experienced three days of rioting, and the following spring the inmates forced the guards out of the cell block and held it for ten hours. In September 1981, the inmates again forced the guards out, injuring a lieutenant in the process.<sup>66</sup>

On December 14, the authorities undertook a programmatic effort to establish their control. National Guard troops, officers with the Honolulu Police Department, and guards from the Halawa High Security Facility (HHSF) were brought in as reinforcements. At first,

the inmates just taunted the new guards. But on the morning of December 15, the warden of HHSF asked his Oahu counterpart to "allow HHSF to conduct the strip search of the cellblock inmates" and "discipline" those who behaved disrespectfully.<sup>67</sup> The request was granted, and HHSF staff stripped the inmates as they returned to the cell block. The prison's medical personnel reported numerous injuries following the search. Seventeen prisoners received medical treatment and an unknown number were prevented from seeking care. One man was so badly beaten that he had to be sent to an outside hospital.<sup>68</sup>

On December 16, the Oahu guards continued the process their HHSF colleagues had begun. Some guards beat inmates during the mandatory strip search; others fought their colleagues to protect the prisoners. One guard described the scene as "chaos ... guys went berserk."<sup>69</sup> Michael Hess said he heard "a fear and pain type of screaming" and "saw two guards holding an inmate while a third beat him with a baton."<sup>70</sup>

The next day, peace was restored, and news of the incident reached the media. Several investigations were initiated, but with little result. The ombudsman's office interviewed 398 people and found 44 separate cases of excessive force. It identified 22 guards and 12 supervisors (including both wardens) who should be disciplined, but the director of the department dismissed all charges.<sup>71</sup>

This sequence of events set the pattern for the next several years. While inmate violence practically disappeared, complaints of staff violence only continued to escalate. Former Oahu unit manager Bruce Bikle complained, "We had control of our inmates but not of our officers."<sup>72</sup> Assistant Attorney General William Bradford Reynolds reported "a pattern of unjustified staff violence at all levels throughout the facility."<sup>73</sup>

Agnes L. Baro, a former prison administrator who has studied the incident, observes:

In the process [of the shakedown], staff learned that inmates could be controlled through the use of excessive physical force. They also learned that disciplinary action would usually not be taken against them. ... When staff were not held accountable for the excessive and illegal use of force during the shakedown, a pattern of systematic violence began to emerge. That pattern and a pattern of not disciplining those responsible for the violence continued for many years.<sup>74</sup>



Guards in other facilities have adopted a similar approach to controlling disorder. For instance, in 1995, after a riot closed the Esmor Detention Center in Elizabeth, New Jersey, the INS transferred its prisoners to other jails. Twenty-five detainees, none of whom had been involved in the disturbance, were sent to the Union County (New Jersey) Jail, where guards greeted them with beatings lasting four hours. The guards made prisoners run a gauntlet, shoved their heads into the toilet, and pulled one man's pubic hair out with pliers, before forcing the prisoners to kneel and chant "America is number one." Three guards were eventually convicted of assault and obstruction.<sup>75</sup>

In February 1998, authorities at the Corrections Corporation of America's (CCA) private facility in Youngstown, Ohio, responded to the murder of an inmate with a brutal form of collective punishment. Paramilitary units called Special Operations Response Teams (SORT) conducted raids in riot gear, forcing inmates to lie or kneel, naked, on the floor while the guards cuffed them, searched them, and ransacked their cells. The prisoners spent more than an hour chained and prone, ordered not to move or speak. One SORT guard wrote in his report that, when an inmate looked away from the wall, "I sprayed pepper spray on my sleeve and wiped it on his face." The state attorney general later described the occurrence as a "reign of humiliation directed indiscriminately at the entire prison population."<sup>76</sup>

A similar incident occurred a few months later at another privately-owned prison. The Wisconsin Department of Corrections estimates that between 15 and 20 inmates were abused over the course of four days during August 1998. The abuse came following an attack on a guard at the CCA-run Whiteville Correctional Facility in Tennessee (to which Wisconsin had shipped some of its prisoners). The inmates describe members of SORT kicking them, slamming them into walls, and using racial slurs. One man says that he was handcuffed, stripped, forced to kneel, and sexually assaulted with a shampoo bottle. Six of the prisoners report being shocked with a stun gun, four of them on their genitals.<sup>77</sup>

These sorts of concerted campaigns have little or nothing to do with upholding the law or fighting crime, and quite a lot to do with state terror and the distribution of power, as the Justice Department determined after its investigation at Oahu. Reporting a "pattern and practice of brutality," investigators concluded that the prison's chief means of control were "fear and violence."<sup>78</sup>

## THE THIRD DEGREE AT AREA 2

If prisons represent government power at its most intensive, policing demonstrates the extensive range of state control. Where prisons rely on techniques of confinement and isolation, policing distributes the state's capacity for surveillance and violence over a broad geographic area and throughout the community—inserting itself into the daily life of the population.<sup>79</sup>

In February 1982, when Chicago police officers Richard O'Brien and William Fahey were murdered, their grief-stricken colleagues undertook a frantic hunt for the killers. According to Renault Robinson, a leader of the Afro-American Police League, "Police smashed down doors and pointed guns at the heads of children" as they searched for suspects.<sup>80</sup> They eventually arrested Andrew and Jackie Wilson, brothers. Andrew Wilson confessed, and a year later both men were convicted.

Andrew Wilson later described his interrogation in the Chicago Police Department's Area 2 headquarters: "They started beating on me, threw me onto the floor, beating, kicking me. ... Then someone took the plastic bag out of the garbage can and held it over my face."<sup>81</sup> Wilson said he was beaten by six or seven cops. He told of being threatened while police commander Jon Burge stuck a gun in his mouth, and of being beaten while handcuffed to a hot radiator. And he said he was repeatedly electrocuted—first through wires attached to a black box, and later with a rod that Burge stuck between his legs. Wilson said he confessed "because I didn't want to be shocked no more."<sup>82</sup>

Hospital records show that Wilson was treated for 15 separate injuries following his interrogation. Dr. John M. Raba, who treated him at Cook County Jail's Cermak Memorial Hospital, wrote in a letter to police superintendent Richard Brzezczek: "Andrew Wilson had several linear blisters on his right thigh, right cheek and anterior chest which were consistent with radiator burns. He stated he had been cuffed to a radiator and pushed into it."<sup>83</sup> Likewise, Deputy Chief Medical Examiner Robert Kirchner concluded that

the marks [on Wilson's ears] are absolutely characteristic of electrical torture. ... I really didn't believe the allegations of electrical torture when I first heard them. ... It was only when I looked at the medical evidence that I said, this really did happen in Chicago.<sup>84</sup>

Soon other victims started coming forward. During a 1991 disciplinary hearing, Melvin Jones told the Police Board that, just days

before Wilson's arrest, he too was tortured by officers in the Area 2 headquarters. Jones said that Burge stuffed a sock in his mouth and then shocked him on the foot, thigh, and genitals using a device similar to the black box Wilson described.<sup>85</sup> Shadeed Am'Min told of being tortured by Burge in 1985 after being arrested on concealed weapons charges. He said that the police repeatedly put guns to his head and played Russian roulette. He also testified to being suffocated with a plastic typewriter cover until he passed out.<sup>86</sup> The hearing lasted five weeks, after which the Police Board fired Burge, noting: "This is *not* an indictment of the entire Police Department."<sup>87</sup>

But it should have been. Thus far, Burge is the only officer to be fired for the Area 2 torture scandal, though it is clear he did not act alone. In fact, Burge's tactics were less the actions of a rogue cop than they were established institutional practices. US District Court judge Milton I. Shadur acknowledged

that in the early- to mid-1980s, Chicago Police Cmdr. Jon Burge and many of the officers working under him regularly engaged in the physical abuse and torture of prisoners to extort confessions. ... [This occurred as an] established practice, not just on an isolated basis.<sup>88</sup>

Indeed, a 1990 report by the Office of Professional Standards' Michael Goldston cataloged 50 instances of torture under Burge. Goldston concluded that it was "methodical" and "systematic."<sup>89</sup> The cases feature eerily similar accounts of police beating and electrocuting suspects, suffocating them with garbage bags and typewriter covers, and threatening them with guns. Medical reports document injuries; witnesses tell of hearing screams, seeing bloody victims, and cops carrying typewriter covers into interview rooms.<sup>90</sup> According to the plaintiffs' lawyers, "All of the victims were black or Latino, so far as we've seen, and the people who were doing the torturing were white officers."<sup>91</sup>

There are also indications that other commanders, besides Burge, knew of the abuse and did nothing. Police reports unsealed by a federal court in 1992 noted: "Particular command members were aware of the systematic abuse and perpetuated it either by actively participating in same or failing to take any action to bring it to an end."<sup>92</sup> The report specifically named LeRoy Martin, who went on to become police superintendent. These cases were briefly reopened in the early 1990s, then summarily dismissed after Burge was fired.<sup>93</sup> So Burge's cohorts remained on the force, moved through the ranks, and continued torturing people of color. Detective Kenneth Boudreau, for example, worked under Burge in the 1980s and re-

mained on the force when Burge left. A 2001 *Chicago Tribune* exposé found that Boudreau had helped get confessions in more than a dozen cases in which the defendants were later acquitted, or where the charges were dropped.

In one case, Boudreau arrested Peter Williams in a 1992 murder investigation. Along with other detectives, Boudreau slapped Williams and beat him with blackjacks. The police handcuffed him to a radiator and refused to let him go to the bathroom until he had already urinated on himself. "By the time they were through," Williams said, "I actually thought I did it." He confessed, and named Dan Young, Jr. and Harold Hill as his accomplices. Hill and Young were likewise arrested, beaten, and forced to confess. Hill, who was 16 at the time, testified at his trial that he gave the police a statement because "I was afraid they were going to kill me." But it turned out that Williams had an ironclad alibi: he was in jail when the crime was committed. Hill and Young weren't so lucky; they were convicted and sentenced to life without parole.<sup>94</sup> Twelve years later, in 2005, DNA evidence cleared them of the charges. Hill remained in prison for a separate conviction, but Young was released right away. "I missed a lot of birthdays," he said. "I should never have been here."<sup>95</sup>

Around the same time, between 1991 and 1993, Boudreau "solved" at least four other murders, relying on similarly dubious confessions. Repeatedly he has been accused of punching, slapping, and kicking defendants, interrogating juveniles without a guardian or advocate present, and taking advantage of people with developmental disabilities. Yet even as his cases unravel, both the Chicago Police and the District Attorney's office refuse to re-examine the convictions he helped win. In fact, the Chicago Police Department has given Boudreau nine official commendations and 70 honorable mentions. He's been "Cop of the Month" twice, and "Cop of the Year" once.<sup>96</sup> It seems Detective Boudreau does his job exactly the way his superiors want him to.

The Chicago Police get confessions in about 70 percent of murder investigations. But between 1991 and 2001, at least 247 such confessions were either thrown out of court or failed to secure a conviction. These included 71 confessions from juveniles younger than 16 (including children as young as 7 years old). They included confessions from developmentally disabled people, who the courts later determined could not understand what was happening to them. They included 3 confessions from people who were in jail at the time of the crime, and 14 from people who named accomplices who were in jail when the crime was committed.<sup>97</sup>



Burge may be gone, but his legacy continues. But is it *his* legacy? Or is he simply the one who got caught, as someone was bound to, with abuses as severe—and as common—as these?

Consider, for example, the case of Ronald Jones. In 1985, Jones was convicted of rape and murder and sentenced to die, almost entirely on the basis of a confession he gave to police. But Jones claimed that he only confessed because the cops beat him repeatedly during his interrogation. He spent eight years on death row, until 1999 when DNA evidence cleared him. Neither Burge nor his men were involved.<sup>98</sup>

More recently, in July 2000, Chicago police arrested Corethian Bell on suspicion that he had raped and murdered his mother. For 50 hours the cops kept this developmentally disabled and mildly paranoid man in a windowless room, repeatedly questioning him and, according to Bell's attorney, hitting him in the head at least once: "It was a process of psychological coercion and then ultimately the employment of physical tactics against a guy who obviously was extremely vulnerable." Bell confessed to the crime, but 17 months later a DNA analysis of blood and semen left at the scene led the police to the real killer.<sup>99</sup>

When the authorities decided to sacrifice Burge, they surely hoped that it would end the controversy over police torture. (Ending the torture itself was, if anything, a secondary concern.) Instead, the scandal has only widened and deepened. Lawyers, activists, journalists—in some cases, journalism and law students—have scoured old cases, brought forth new evidence, identified additional victims, and accused increasing numbers of cops. By 2005 Chicago-area activists petitioned the Organization of American States' Inter-American Commission on Human Rights to investigate 130 claims spanning the years 1971 to 1992.<sup>100</sup> One of the first victims, Anthony "Satan" Holmes, was interrogated by Burge for six hours in 1973. Holmes said Burge suffocated him with a plastic garbage bag and attached a "black box" electrical device to his handcuffs.<sup>101</sup>

The scandal greatly damaged the credibility of the criminal justice system. In 2003, such doubts led then-governor George H. Ryan to temper the sentences of all 156 people on Illinois's death row and to pardon 6 of them outright. Four of the six had been the victims of torture at Area 2—Madison Hobley, Stanley Howard, Aaron Patterson, and Leroy Orange. The governor specifically cited the "overwhelming evidence of a pattern and practice of torture at Area 2" and mentioned Jon Burge by name, but he also faulted prosecutors and the courts, incompetent defense attorneys, and legislators



resistant to reform. "The system has failed all four men," he said. "And it has failed the people of this state."<sup>102</sup>

The governor's act, heroic though it was, unfortunately only addressed the most serious consequences of the problem. For those people who were on death row at the time, the threat of execution was removed. But for unknown numbers of innocent people, justice remained as distant as ever. Eric Caine, to offer a clear case, was arrested with Aaron Patterson in 1986. He was tortured by the same detectives and charged with the same crime. He confessed and was convicted. Unlike Patterson, however, Caine was sentenced to life in prison—where he remains. "I'm the forgotten innocent," he says.<sup>103</sup>

Undoubtedly there are other forgotten innocents, not only in Illinois, but around the country—victims of police profiling, coercive interrogations, overzealous prosecutors, blundering defense attorneys, hostile judges, biased juries, and draconian sentencing laws.

Brian Keith Baldwin may have been one such innocent. Baldwin, a Black man, was executed in Alabama on June 18, 1999. Baldwin's 1977 trial lasted two days, and he was convicted chiefly on the basis of a confession he said was extracted under torture, including the use of a cattle prod. Shortly before his execution, a former cop came forward to verify that Baldwin had been "beaten and physically mistreated" during interrogation.<sup>104</sup> It made no difference. He was sentenced to die, and he did.

## AREA 2—ANYWHERE, EVERYWHERE

It is likely that every police force in the country has its Area 2. In New York, in 1985, a Black high school student complained that he had been falsely arrested for possession of marijuana and tortured in the 106<sup>th</sup> precinct. The young man, who had no previous arrest record, told of being beaten and electrocuted while in handcuffs, suffering burns on his arms, back, and buttocks. He said he finally confessed when police threatened to shock his genitals. Within days, four others came forward with similar stories about the 106<sup>th</sup>. All the victims were Black or Latino. Four cops were convicted of assault, five commanders were forced to retire, and the New York Police Department discontinued its use of stun guns.<sup>105</sup>

A few years later, the Mollen Commission, which was tasked with investigating corruption in the NYPD, also found widespread abuse of suspects and people in custody. In its 1994 report, the commission wrote:

[One] corrupt cop in the 73rd Precinct, accompanied by several other officers, shoved a gun in the mouth of a drug dealer and threatened to "blow his brains out" if he did not give them information about where and when drug money would be collected, and thus could be robbed. On another occasion, officers from that same precinct allegedly threatened to feed an individual to pit bulls if he did not give up information on a stash location that the officers wanted to rob.<sup>106</sup>

The report continues later:

One officer from a Brooklyn North precinct told us how he and his colleagues once threw a bucket of ammonia in the face of an individual detained in a precinct holding pen. Another cooperating officer told us how he and his colleagues threw garbage and then boiling water on a person hiding in a dumbwaiter shaft. [Officer Bernard] Cawley and his friends ... once raided a brothel in uniform, ordered the men to leave and the women to line up. The cops then picked their victims of choice, and proceeded to terrorize and rape them without compunction.<sup>107</sup>

In Prince George's County, Maryland, police interrogated Keith Longtin for 38 hours following the murder of his wife. Detectives showed Longtin photographs of his wife's bloody, mutilated, naked corpse and taunted him as he wept. Longtin says that when he tried to leave, a detective "said he was going to handcuff me to the wall and beat the crap out of me if I didn't sit down."<sup>108</sup>

Over the course of two days, Longtin was only allowed 50 minutes of sleep, while detectives tag-teamed him with their questioning.<sup>109</sup> The first would describe the murder in excruciating detail; the next would ask questions about the crime. Longtin repeated what he'd been told, and the police wrote in their report: "The defendant gave details about this case that had not been released to the media and only the perpetrator would have known."<sup>110</sup> As a result, Keith Longtin spent eight months in jail, though DNA evidence would ultimately prove his innocence.

The case led the *Washington Post* to conduct a yearlong investigation into the operations of Prince George's County's homicide squad. The *Post* concluded that the "Prince George's County homicide detectives have coerced confessions and denied suspects lawyers during marathon interrogations that appear to violate state rules."<sup>111</sup> The *Post* found interrogations lasting 32, 35, 51, and even

80 hours.<sup>112</sup> Steven Kupferberg, a former Prince George's prosecutor, told the paper: "That's the name of the game: They hold people for as long as it takes until they say something, and they don't let them see a lawyer."<sup>113</sup>

One of those subjected to extended questioning was Corey Beale, a 17-year-old Black man with a learning disability that interferes with his ability to understand spoken language. In August 1998, Beale's friend Michael Harley was stabbed and killed shortly after the two of them had been at a party together. Police took Beale in for questioning and held him for three days, refusing to let him see either a lawyer or his mother. First the cops tried to get Beale to implicate one of his friends, then they accused him of committing the crime himself. "That's when they got all aggressive and started cussing and stuff," Beale told the *Post*.

Then the cop started getting violent. ... He started jacking me up. He snapped me out of the chair and threw me against the wall. ... He was like, "We ain't got time to be playing games with you. Just confess so we can all go home." ... I would have said anything to get out of that room.<sup>114</sup>

Beale spent ten months in jail before police in nearby Charles County produced evidence exonerating him.

James Papirmeister, another former prosecutor, described the attitude of the police: "Most of them want to get the right person. ... Some don't care about that. They just want to close a case. Job success: that's what it's all about. It's the ends justify the means. It's routine."<sup>115</sup>

In some cases, the police use torture without even the pretext of an investigation. In 1989, Kenneth Watson, a Black man, was arrested for leaving the site of an accident. According to inmates present at the time, Monroe, Michigan sheriff's deputies taped Watson's mouth shut and chained him to a drain cover on his cell floor. Then, shouting racist slurs, they beat and kicked him for several hours until he lost consciousness. Watson suffered a broken wrist and fractured skull, as well as assorted cuts and bruises. He sued and, in December 1992, received a \$600,000 settlement. No deputies were penalized.<sup>116</sup>

Accounts of more prosaic abuse are easy to find: A Providence cop was convicted of federal civil rights violations in 1991 after he beat a prisoner who was handcuffed to the bars of his cell.<sup>117</sup> In May 1998, two officers of the California Highway Patrol pled no contest to charges of false imprisonment; they had repeatedly arrested a

homeless man for washing windshields, pepper sprayed him, and then abandoned him in remote areas.<sup>118</sup> One Atlanta cop has been accused, again and again, of driving suspects to deserted areas for coercive questioning—beating them, choking them, and squeezing their testicles while asking questions.<sup>119</sup> In December 2005, St. Louis police detective Michael Tillman was suspended after he threatened to shock a handcuffed suspect with a stun gun; Tillman apparently became frustrated when the suspect refused to identify himself.<sup>120</sup>

### PROOF AND PUNISHMENT

The use of torture during interrogation has a long history. During the Middle Ages, torture was both the punishment and the means of investigation. There was no presumption that a suspect was innocent until such time that the evidence was assembled and guilt proven. Instead, every bit of evidence indicated a measure of guilt. As evidence accumulated, guilt increased. At some point, a partial proof demonstrated enough guilt to warrant using torture—both as a punishment for the partial guilt already established and as a means of collecting the evidence necessary to complete the proof.<sup>121</sup>

Something of this theory survives in our modern system, not only in the rationale behind extra-legal torture and police-administered “curbside justice,” but also in the structure of the judicial process itself. The police can stop you, based on some “reasonable suspicion” that you have committed a crime. Really, reasonable suspicion is little more than a hunch—it can even be a mere pretext—but it’s enough for them to detain you and ask you questions. During questioning, they may find “probable cause” to arrest you, and then to search you as part of the arrest procedure—perhaps generating additional evidence. You will then be jailed, providing the opportunity for police to search and question you more extensively. And while you await trial, you may be held for months in conditions almost identical to those that will later be imposed as a penalty. All the while, we are told, the suspect is “presumed innocent.”<sup>122</sup>

As one lawyer explained to me, “the process is punishment.”<sup>123</sup> Even absent physical coercion, the logic carries over from the earlier period: a little evidence justifies a small imposition in search of more evidence. In minor cases, a conviction may only lead to “time served,” indicating that the accused has already paid for his crime. And what, we might ask, of the person who is eventually acquitted, having paid the same price?

In this vein, it is easy to see torture as an extension of routine police practices. After all, the cops are authorized to use force and conduct investigations. It is, then, a short step to using force while conducting investigations. This shift even seems to follow the same reasoning as that by which evidence accumulates from “reasonable suspicion” to “probable cause.” Likewise, the police identify suspects, collect evidence against them, and present them for punishment. Is it surprising, then, that some cops take the extra step and administer punishment themselves? Or that the punishment sometimes comes before the evidence?

These abuses do not occur as flukes, or even as negative side-effects, but as an integral part to the way policing is done in the United States. And they may, ultimately, have less to do with questions of guilt and innocence, crime and law, than with sheer power—not only the power of police and prison guards, but the whole system of stratification by race, class, and gender that these lowest functionaries maintain and defend. So long as social power is distributed along these lines, torture will remain a prominent feature of the American criminal justice system.

#### NOTES

- <sup>1</sup> Kate Martin, “Secret Arrests and Preventive Detention,” in *Lost Liberties: Ashcroft and the Assault on Personal Freedom*, ed. Cynthia Brown (New York: New Press, 2003), 74, 82.
- <sup>2</sup> Center for Constitutional Rights, “The State of Civil Liberties: One Year Later; Erosion of Civil Liberties in the Post 9/11 Era; A Report Issued by the Center for Constitutional Rights,” <http://www.ccr-ny.org/v2/whatsnew/report.asp?ObjID=nQdbIRkDgG&Content=153> (accessed December 11, 2002), 3.
- <sup>3</sup> David Cole, “The Ashcroft Raids,” *Amnesty Now* (Spring 2002).
- <sup>4</sup> Center for Constitutional Rights, “The State of Civil Liberties,” 7; and Eric Lichtblau, et al., “Response to Terror: Justice Dept. to Tighten Focus on Terrorism Law,” *Los Angeles Times*, November 9, 2001.
- <sup>5</sup> American Civil Liberties Union [ACLU], “USA Patriot Act Boosts Government Powers While Cutting Back on Traditional Checks and Balances: An ACLU Legislative Analysis” (November 1, 2001), <http://archive.aclu.org/congress/110101a.html> (accessed December 22, 2002).
- <sup>6</sup> This trick has been tried before, with variations. Following terrorist bombings in 1919, the Palmer raids targeted left-wing groups, resulting in 4,000 arrests and almost 1,000 deportations. Ward Churchill and Jim Vander Wall, *Agents of Repression: The FBI’s Secret Wars Against the Black Panther Party and the American Indian Movement* (Boston: South End Press, 1990), 22.



In 1942, Franklin D. Roosevelt authorized the army to arrest 110,000 Japanese Americans and hold them in concentration camps. In this case, legal citizenship offered no protection against racist paranoia: three-quarters of those interned were US citizens. Howard Zinn, *A People's History of the United States, 1492–Present* (New York: HarperPerennial, 1995), 407.

<sup>7</sup> Dan Eggen, "Tapes Show Abuse of 9/11 Detainees," *Washington Post*, December 19, 2003.

<sup>8</sup> US Department of Justice, Office of the Inspector General [OIG], "Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York" (December 2003), <http://www.usdoj.gov/oig/special/0312/> (accessed February 20, 2005), 28.

<sup>9</sup> Quoted in *Ibid.*, 36.

<sup>10</sup> *Ibid.*, 28.

<sup>11</sup> *Ibid.*, 30.

<sup>12</sup> *Ibid.*, 11–12, 37–38.

<sup>13</sup> Michael Powell, "A Prisoner of Panic After 9/11," *Washington Post*, November 29, 2003.

<sup>14</sup> OIG, "Supplemental Report," 7–8.

<sup>15</sup> Quoted in *Ibid.*, 26.

<sup>16</sup> Anne-Marie Cusac, "Ill-Treatment on Our Shores," *Progressive* (March 2002), 26.

<sup>17</sup> *Ibid.*, 26–27. In 2003 the Immigration and Naturalization Service became part of the Department of Homeland Security—as did the Border Patrol, the Secret Service, the Federal Emergency Management Agency, the Customs Service, and the brand new Transportation Security Administration. Within the new department, the INS's work, and its 37,000 employees, have been divided between the Bureau of Immigration Services (which issues visas and other such documents), the Bureau of Customs and Border Protection (which is responsible for controlling who and what enters the country), and the Bureau of Immigration and Customs Enforcement (which enforces immigration laws in the country's interior). Helen Dewar, "Senate Passes Homeland Security Bill," *Washington Post*, November 20, 2002; and, Cindy Rodriguez, "Beset By Problems, INS Abolished After 112 Years," *Washington Post*, February 28, 2003.

<sup>18</sup> Quoted in Cusac, "Ill-Treatment on Our Shores," 26.

<sup>19</sup> ACLU, "USA Patriot Act." The administration's case for the Patriot Act employs reasoning familiar from more recent debates about warrantless wiretaps and torture. In an undated letter to Congress, Assistant Attorney General Daniel Bryant wrote: "As Commander-in-Chief, the President must be able to use whatever means necessary

to prevent attacks upon the United States; this power, by implication, includes the authority to collect information necessary to its effective exercise. ... The courts have observed that even the use of deadly force is reasonable under the Fourth Amendment if used in self-defense or to protect others. ... Here, for Fourth Amendment purposes, the right to self-defense is not that of an individual, but that of the nation and its citizens. ... If the government's heightened interest in self-defense justifies the use of deadly force, then it certainly would also justify warrantless searches." Quoted in Nancy Chang, "The USA PATRIOT Act: What's So Patriotic About Trampling on the Bill of Rights?" (Center for Constitutional Rights: November 2004), <http://www.ccr-ny.org/v2/reports/listing.asp?offset=230> (accessed December 28, 2005).

<sup>20</sup> Quoted in Nancy Chang, "How Democracy Dies: The War on Our Civil Liberties," in Brown, *Lost Liberties*, 48.

<sup>21</sup> David Cole, "Trading Liberty for Security After September 11," (Foreign Policy in Focus Policy Report, September 2002), [www.fpiif.org/papers/post9-11\\_body.html](http://www.fpiif.org/papers/post9-11_body.html) (accessed December 12, 2002).

<sup>22</sup> In July 2005, a federal appeals court ruled that military tribunals were the proper forum for trying enemy combatants. At once, the military declared its intention to begin proceedings against four prisoners at Guantánamo. Josh White, "Military Trials for Detainees to Resume," *Washington Post*, July 19, 2005.

<sup>23</sup> James Meek, "People the Law Forgot (Part Two)," *Guardian*, December 3, 2003.

<sup>24</sup> Megan Garvey et al., "Hundreds Are Detained After Visits to INS: Thousands Protest Arrests of Mideast Boys and Men Who Complied With Order to Register," *Los Angeles Times*, December 19, 2002; and Chang, "How Democracy Dies," 49.

<sup>25</sup> Behrooz Arshadi, "Treated Like a Criminal: How the INS Stole Three Days of My Life," *Progressive*, March 2003, 22–23.

<sup>26</sup> Meek, "People the Law Forgot (Part Two)." This comparison demonstrates the benefits of white privilege and US citizenship, but it also indicates the limits of those privileges. Lindh spent the first weeks of his captivity naked and alone, duct-taped to a stretcher in a shipping container at Camp Rhino, Afghanistan. His guards wrote "shithead" on his blindfold; then they took pictures. Eventually, he negotiated a "deal" with prosecutors: he agreed to cooperate with government investigators, and prosecutors would not pursue the most serious charges. He was sentenced to 20 years. Human Rights Watch, "The Road to Abu Ghraib" (June 2004); "I Made a Mistake by Joining the Taliban"; Apologetic Lindh Gets 20 Years," *Washington Post*, October 5, 2002.

<sup>27</sup> OIG, "Supplemental Report," 10. Emphasis added.

<sup>28</sup> Michel Foucault posits “a carceral continuum,” by which the threat of prison underwrites all the subtle disciplines, the claims of authority, and the petty tyrannies that shape daily life. At the same time, the prison also becomes the model for all other social institutions; its structures and practices become their structures and practices: “Throughout this network, which comprises so many ‘regional’ institutions, relatively autonomous and independent, is transmitted, with the ‘prison-form’, the model of justice itself. The regulations of the disciplinary establishments may reproduce the law, the punishments imitate the verdicts and penalties, the surveillance repeat the police model; and, above all these multiple establishments, the prison, which in relation to them is a pure form, unadulterated and unmitigated, gives them a sort of official sanction. ... Prison continues, on those who are entrusted to it, a work begun elsewhere, which the whole of society pursues on each individual through innumerable mechanisms of discipline. By means of a carceral continuum, the authority that sentences infiltrates all these other authorities that supervise, transform, correct, improve.”

He observes that “prisons resemble factories, schools, barracks, hospitals, which all resemble prisons.” Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1977), 302–303, 228.

<sup>29</sup> In June 2004, there were 2,131,180 people incarcerated in the United States, 910,200 of them Black. One in eight Black men age 25–29 were incarcerated, 12.6 percent, compared with 3.6 percent of Hispanic and 1.7 percent of white men the same age. Altogether 4.9 percent of all Black men, 1.7 percent of all Hispanic men, and .7 percent of all white men were in custody that month. Women are incarcerated at a much lower rate. In June 2004, 183,400 women were in prison or jail (as compared with 1,947,800 men). Still, similar racial disparities are in evidence: .36 percent of Black women were in custody; .14 percent of Hispanic women; and .08 percent of white women. Paige M. Harridan and Allen J. Beck, “Prison and Jail Inmates at Midyear 2004” (US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, April 2005), 111.

<sup>30</sup> [Glen Ford and Peter Gamble,] “Mass Incarceration and Rape: The Savaging of Black America,” *Black Commentator*, June 17, 2004, [http://www.blackcommentator.com/95/95\\_cover\\_prisons.html](http://www.blackcommentator.com/95/95_cover_prisons.html) (accessed November 8, 2004). Emphasis in original.

<sup>31</sup> Ted Conover, *Newjack: Guarding Sing Sing* (New York: Random House, 2000), 49.

<sup>32</sup> For example: Human Rights Watch, “Red Onion State Prison: Super-Maximum Security Confinement in Virginia” (April 1999), 3.

- <sup>33</sup> Mark S. Hamm, Therese Coupeze, Frances E. Hoze, and Corey Weinstein, "The Myth of Humane Imprisonment: A Critical Analysis of Severe Discipline in US Maximum Security Prisons, 1945–1990," in *Prison Violence in America*, 2<sup>nd</sup> ed., ed. Michael C. Braswell, Reid H. Montgomery, Jr., and Lucien X. Lombardo (Cincinnati: Anderson, 1994), 180–181.
- <sup>34</sup> Zinn, *A People's History*, 542, 544.
- <sup>35</sup> Willie Wisely, "Corcoran: Sex, Lies, and Videotapes," in *Prison Nation: The Warehousing of America's Poor*, ed. Tara Herivel and Paul Wright (New York: Routledge, 2003), 245; and Christian Parenti, *Lockdown America: Police and Prisons in the Age of Crisis* (London: Verso, 1999), 173.
- <sup>36</sup> Parenti, *Lockdown America*, 171, 173.
- <sup>37</sup> Wisely, "Corcoran," 247–248.
- <sup>38</sup> Quoted in Parenti, *Lockdown America*, 174.
- <sup>39</sup> Quoted in Wisely, "Corcoran," 249.
- <sup>40</sup> Quoted in Parenti, *Lockdown America*, 183.
- <sup>41</sup> Wisely, "Corcoran," 246–247
- <sup>42</sup> Steve J. Martin, "Sanctioned Violence in American Prisons," in *Building Violence: How America's Rush to Incarcerate Creates More Violence*, ed. John P. May (Thousand Oaks, CA: Sage Publications, 2000), 116; John Midgley, "Prison Litigation, 1950–2000: Hands Off, Hands On, Gloves On," in Herivel and Wright, *Prison Nation*, 297.
- <sup>43</sup> Quoted in Michael Welch, *Punishment in America: Social Control and the Ironies of Imprisonment* (Thousand Oaks, CA: Sage Publications, 1999), 200.
- <sup>44</sup> Parenti, *Lockdown America*, 174; Angela Y. Davis and Cassandra Shaylor, "A Question of Control," *San Francisco Chronicle*, April 9, 2000; Sasha Abramsky, "Return of the Madhouse," *American Prospect*, February 11, 2002, 26; and Bonnie Kerness, preface to *Torture in US Prisons: Evidence of US Human Rights Violations*, ed. Julia Lutsky (Newark, NJ: American Friends Service Committee, New York Metropolitan Region, Criminal Justice Program, 2000), vi.
- <sup>45</sup> Quoted in Welch, *Punishment in America*, 201.
- <sup>46</sup> Quoted in Martin, "Sanctioned Violence," 116.
- <sup>47</sup> "In the USA, torture and ill-treatment of incarcerated women includes beatings; rape and other forms of sexual abuse; the cruel, inhuman or degrading use of restraints on women prisoners, including those who are pregnant or seriously ill; inadequate access to medical treatment; terrible conditions in isolation units, and harsh and punitive labour. Allegations of sexual abuse of women prisoners in the USA nearly always involve male staff who, contrary to international standards, are allowed unsupervised access to female jail and prison inmates in many jurisdictions." Amnesty International, *Broken Bodies, Shattered Minds*:

*Torture and Ill-Treatment of Women* (London: Amnesty International Publications, 2001), 43.

Many of these specific practices will be addressed in the following chapters. Particular attention is given to the role of male guards in women's prisons, and the similarities and divergences between the use of rape in women's prisons and in men's.

<sup>48</sup> Amnesty International, "Not Part of My Sentence: Violations of the Human Rights of Women in Custody," (March 1999), 59–60.

<sup>49</sup> [Antonio M. Taguba], "Article 15-6 Investigation of the 800th Military Police Brigade (The Taguba Report)," in *Torture and Truth: America, Abu Ghraib, and the War on Terror*, by Mark Danner (New York: New York Review Books, 2004), 312.

<sup>50</sup> Anne-Marie Cusac, "Abu Ghraib, USA," *Progressive*, July 2004, 20; and Alan Elsner, "Terror Cells: Abuse of Iraqi Detainees is an Echo of the Cruelties Inflicted on US Inmates," *Washington Post*, May 9, 2004.

<sup>51</sup> Five other guards and a nursing supervisor were also named in the suit. A federal magistrate determined that the litigation had "arguable merit in fact and law," but Nimley disappeared after his release and the case was never resolved. David Finkel and Christian Davenport, "Records Paint Dark Portrait of Guard," *Washington Post*, June 5, 2004.

<sup>52</sup> Graner does also have his defenders. Another guard, Jim Grassi, told the *Washington Post*, "I'm not going to lie to you and say no one was abused. But I can say this about Graner—I never witnessed him hit an inmate, punch him, slap him. ... He was by the book. Graner knew the policy and procedures manual better than the warden—and the warden is the one who wrote it. When he was bored, he'd sit and copy the manual onto a notepad, just to know it better."

Graner's ex-wife, however, is not among his defenders. She has accused Graner of dragging her by the hair and trying to throw her down the stairs, in addition to repeated threats of similar violence. Finkel and Davenport, "Records Paint Dark Portrait of Guard."

<sup>53</sup> Discussing torture, Human Rights Watch's Jamie Fellner notes, "There are no national or even state-specific statistics on this kind of staff abuse of inmates. Prison systems have little incentive to gather such statistics, and no laws require them to do so. The incidents we know about—from litigation, newspaper stories, investigations by special commissions and human rights groups—constitute the tip of the iceberg. But the truth is, we do not know how big that iceberg is." Jamie Fellner, "Torture in U.S. Prisons," in *Torture: Does It Make Us Safer? Is It Ever OK? A Human Rights Perspective*, ed. Kenneth Roth and Minky Worden (New York: New Press, 2005), 174.

<sup>54</sup> Hamm et al., "The Myth of Humane Imprisonment," 185.

<sup>55</sup> Martin, "Sanctioning Violence," 114.



- <sup>56</sup> Quoted in Midgely, "Prison Litigation," 288.
- <sup>57</sup> Quoted in Rolando V. del Carmen, "The Supreme Court and Prison Excessive Use of Force Cases: Does One Test Fit All?" in Braswell et al., *Prison Violence*, 202.
- Keith Hudson brought the suit against two guards in Louisiana's Angola Prison. The guards, Jack McMillan and Marvin Woods, beat Hudson while he was handcuffed. A supervisor, Arthur Mezo, witnessed the beating and only advised the guards "not to have too much fun." Hudson suffered bruises, swelling, loose teeth, and a cracked dental plate as a result. del Carmen, "Supreme Court," 202.
- <sup>58</sup> Quoted in Midgely, "Prison Litigation," 288, 289.
- <sup>59</sup> Midgely, "Prison Litigation," 290.
- <sup>60</sup> Foucault, *Discipline and Punish*, 11, 15–16.
- <sup>61</sup> Angela Y. Davis, "Race, Gender, and Prison History: From the Convict Lease System to the Supermax Prison," in *Prison Masculinities*, ed. Don Sabo, Terry A. Kupers, and Willie London (Philadelphia: Temple University Press, 2001), 37. Emphasis added.
- <sup>62</sup> *Ibid.*, 40.
- <sup>63</sup> Harrison and Beck, "Prison and Jail Inmates at Midyear 2004," 11.
- <sup>64</sup> In 1930, Blacks were incarcerated at three times the rate of whites; in 1950, four times; in 1960, five times; in 1970, six times; in 1989, seven times; and in 1998, eight times. Welch, *Punishment in America*, 43.
- The Bureau of Justice Statistics reports, "Since 1995 the annual rate of growth in the number of female inmates has averaged 5.0%, higher than the 3.3% average increase of male inmates." Harrison and Beck, "Prison and Jail Inmates at Midyear 2004," 5.
- <sup>65</sup> Elliott Currie, *Crime and Punishment in America* (New York: Metropolitan Books, 1998) 163–166.
- <sup>66</sup> Agnes L. Baro, "Political Culture and Staff Violence: The Case of Hawaii's Prison System," in Braswell et al., *Prison Violence*, 133–134.
- <sup>67</sup> Quoted in Baro, "Political Culture and Staff Violence," 134.
- <sup>68</sup> Baro, "Political Culture and Staff Violence," 134.
- <sup>69</sup> Quoted in Baro, "Political Culture and Staff Violence," 134.
- <sup>70</sup> *Ibid.*, 135.
- <sup>71</sup> Baro, "Political Culture and Staff Violence," 135–136.
- <sup>72</sup> Quoted in Baro, "Political Culture and Staff Violence," 136–137.
- <sup>73</sup> *Ibid.*, 137.
- <sup>74</sup> Baro, "Political Culture and Staff Violence," 123 and 141.
- <sup>75</sup> Welch, *Punishment in America*, 133–135.
- <sup>76</sup> Quoted in Barry Yeoman, "Steel Town Lockdown," *Mother Jones*, May/June 2000, 43.

- <sup>77</sup> Amnesty International, "United States of America: Cruelty in Control? The Stun Belt and Other Electro-Shock Equipment in Law Enforcement" (June 8, 1999).

There are sound economic reasons why private prisons feature so prominently in these stories. Since corporate prisons are paid per inmate, they have a financial incentive to maximize the inmate population. At the same time, like any business, they seek to minimize costs, including staffing costs. Privatization thus promotes overcrowding and understaffing. The profit motive helps create the conditions for abuse. For a related discussion, see Welch, *Punishment in America*, 294–295.

- <sup>78</sup> Quoted in Baro, "Political Culture and Staff Violence," 137.
- <sup>79</sup> For a historical perspective on the police capacity for community penetration, see Allan Silver, "The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police, and Riot," in *The Police: Six Sociological Essays*, ed. David J. Bordua (New York: John Wiley and Sons, 1976).
- <sup>80</sup> Quoted in David Jackson, "Police Hope for Answers at Last in Torture Case," *Chicago Tribune*, November 25, 1991.
- <sup>81</sup> Quoted in John Gorman, "'Police Tortured Me,' Cop Killer Says at Suit Hearing," *Chicago Tribune*, February 24, 1989.
- <sup>82</sup> Quoted in William Grady, "Police Brutality Suit Heads to Trial," *Chicago Tribune*, February 15, 1989.
- <sup>83</sup> Ibid.
- <sup>84</sup> Quoted in Jackson, "Police Hope for Answers."
- <sup>85</sup> Quoted in Sharman Stein, "Second Convict Tells of Torture by Burge," *Chicago Tribune*, February 20, 1992.
- <sup>86</sup> Sharman Stein, "3rd Witness Calls Burge a Torturer," *Chicago Tribune*, February 21, 1992.
- <sup>87</sup> Quoted in Sharman Stein, "Police Board Fires Burge for Brutality," *Chicago Tribune*, February 11, 1993. Emphasis added.
- <sup>88</sup> Quoted in Steve Mills and Ken Armstrong, "A Tortured Path to Death Row," *Chicago Tribune*, November 17, 1999.
- <sup>89</sup> Quoted in Mills and Armstrong, "Tortured Path."
- <sup>90</sup> Mills and Armstrong, "Tortured Path."
- <sup>91</sup> Quoted in William Blum, *Rogue State: A Guide to the World's Only Superpower* (Monroe, ME: Common Courage Press, 2000), 57.
- <sup>92</sup> Quoted in David Jackson, "13 Years of Cop Torture Alleged," *Chicago Tribune*, February 8, 1992.
- <sup>93</sup> Steve Mills, "Brutality Probe Haunts City," *Chicago Tribune*, February 23, 1999. A special prosecutor was appointed in April 2002 but has yet to issue indictments or make his findings public.
- <sup>94</sup> Maurice Possley, Steve Mills, and Ken Armstrong, "Veteran Detective's Murder Cases Unravel," *Chicago Tribune*, December 17, 2001.

- <sup>95</sup> Quoted in Steve Mills and Jeff Coen, "12 Years Behind Bars, Now Justice at Last," *Chicago Tribune*, February 1, 2005.
- <sup>96</sup> Mills and Coen, "12 Years Behind Bars"; and Possley, Mills, and Armstrong, "Veteran Detective's Murder Cases Unravel."
- <sup>97</sup> Ken Armstrong, Steve Mills, and Maurice Possley, "Coercive and Illegal Tactics Torpedo Scores of Cook County Murder Cases," *Chicago Tribune*, December 16, 2001.
- <sup>98</sup> Mills and Armstrong, "Tortured Path."
- <sup>99</sup> Steve Mills, "Man Sues Police, Alleging Coercion," *Chicago Tribune*, July 16, 2002.
- <sup>100</sup> "Commission to Probe Alleged Police Abuse," *Chicago Tribune*, September 18, 2005.
- <sup>101</sup> Robert Blau and David Jackson, "Police Study Turns Up Heat on Brutality," *Chicago Tribune*, February 9, 1992.
- <sup>102</sup> "Excerpts from Ryan Speech at DePaul," *Chicago Tribune*, January 12, 2003.
- <sup>103</sup> Quoted in Steve Mills and Don Terry, "Freedom Eludes Inmate Who Got Life, Not Death," *Chicago Tribune*, December 17, 2003.
- <sup>104</sup> Quoted in Amnesty International, "United States of America: A Briefing for the UN Committee Against Torture" (May 2000) 14.
- <sup>105</sup> Marilyn Johnson, *Street Justice: A History of Police Violence in New York City* (Boston: Beacon Press, 2003), 279–280.
- <sup>106</sup> City of New York, Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department [Mollen Commission], "Commission Report" (July 7, 1994), 45.
- <sup>107</sup> *Ibid.*, 47.
- <sup>108</sup> Quoted in April Witt, "Allegations of Abuse Mar Murder Cases," *Washington Post*, June 3, 2001.
- <sup>109</sup> April Witt, "In Pr. George's Homicides, No Rest for the Suspects," *Washington Post*, June 4, 2001.
- <sup>110</sup> Quoted in Witt, "Allegations of Abuse."
- <sup>111</sup> Witt, "Allegations of Abuse."
- <sup>112</sup> Witt, "No Rest for the Suspects."
- <sup>113</sup> Quoted in Witt, "Allegations of Abuse."
- <sup>114</sup> Quoted in Witt, "No Rest for the Suspects."
- <sup>115</sup> Quoted in Witt, "Allegations of Abuse."
- <sup>116</sup> Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States* (New York: Human Rights Watch, 1998), 185.
- <sup>117</sup> *Ibid.*, 355.
- <sup>118</sup> Amnesty International, "Race, Rights and Police Brutality" (September 1, 1999), 18.

<sup>119</sup> Human Rights Watch, *Shielded From Justice*, 130.

<sup>120</sup> Bill Bryan, "Police Officer Is Suspended, Accused of Threatening Prisoner With Stun Gun," *St. Louis Post-Dispatch*, December 30, 2005. [www.stltoday.com/stltoday/news/stories.nsf/stcharles/story/A4383661B2FCCE26862570E70015B4B0?OpenDocument](http://www.stltoday.com/stltoday/news/stories.nsf/stcharles/story/A4383661B2FCCE26862570E70015B4B0?OpenDocument) (accessed January 2, 2006).

<sup>121</sup> "The different pieces of evidence did not constitute so many neutral elements, until such time as they could be gathered together into a single body of evidence that would bring the final certainty of guilt. Each piece of evidence aroused a particular degree of abomination. ... Thus a semi-proof did not leave the suspect innocent until such time as it was completed; it made him semi-guilty; slight evidence of a serious crime marked someone as slightly criminal. ... The suspect, as such, always deserved a certain punishment; one could not be the object of suspicion and be completely innocent. ... When one reached a certain degree of presumption, one could then legitimately bring into play a practice that had a dual role: to begin the punishment in pursuance of the information already collected and to make use of this first stage of punishment in order to extort the truth that was still missing," Foucault, *Discipline and Punish*, 42.

The English system was somewhat exceptional, in that officially sanctioned torture was limited to ecclesiastical and "prerogative" courts, such as the infamous Star Chamber. These bodies operated outside the system of common law, relying instead on the authority of the Church or the Crown. Jerome H. Skolnick, "American Interrogation: From Torture to Trickery," in *Torture: A Collection*, ed. Sanford Levinson (Oxford: Oxford University Press, 2004), 111. See also John H. Longbein, "The Legal History of Torture," in Levinson, *Torture: A Collection*; and James Ross, "A History of Torture," in Roth and Worden, *Torture: Does It Make Us Safer? Is It Ever OK?* Ross's essay traces the legal history of torture in Europe and the United States, from Ancient Greece to the present. The English experience is discussed on page 10.

<sup>122</sup> Of course, not everyone experiences this process in the same fashion. Michael Welch writes: "This form of pretrial punishment is often reserved for people who cannot financially secure their release by meeting the bail. In other words, even at the early stages of determining one's guilt or innocence, the criminal justice system treats suspects differently on the basis of their social class. Upper- and middle-class suspects are more likely to spend time in the community while awaiting trial, whereas those who are poor face months of detention in an overcrowded jail." Welch, *Punishment in America*, 91.

<sup>123</sup> Edward Koziboski, in conversation, 1996.

## CHAPTER 6

# TOOLS OF THE TRADE

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POLICE BRUTALITY IS NOT just a matter of bad cops, any more than jailhouse torture is simply the work of bad guards, or the mistreatment of prisoners at Abu Ghraib and Guantánamo Bay is just a problem with war-crazed GIs. In each case, the institution's historical role and social function shape its day-to-day operations. More concretely, specific policies establish practices and conditions that make abuse not just possible, but practically inevitable.

Amnesty International highlights the degree to which abusive practices are either authorized or encouraged by US prison officials, and promoted by overall institutional conditions and greater social pressures:

There are laws and practices authorized in the USA which either directly flout international standards or facilitate torture and ill-treatment. Many such practices are on the increase, partly because of more punitive attitudes towards offenders, and partly because of the pressures resulting from the massive increase in the US prison and jail population during the past two decades. Examples are the proliferation of "supermaximum security" facilities deliberately designed to house prisoners in long-term isolation in conditions of extreme deprivation; the increasing use of electroshock weapons and other cruel methods of restraint; an increase in the number of children incarcerated with adults in inappropriate or abusive conditions; and an increase in the detention of asylum-seekers in punitive conditions in local jails, often far from relatives, their lawyers, or monitoring groups. Policies giving male guards unsupervised access to women prisoners in many US facilities also flout international standards and can facilitate abuses.

While many of the abusive practices take place at [the] state or local level, the US Government has done little to discourage them and, indeed, has actively supported some measures through federal funding or employing similar practices in the federal system.<sup>1</sup>



Several of the practices Amnesty mentions bear directly on the present discussion, and should be examined in greater detail. Among these are the use of electronic weaponry and full-body restraints, super-maximum security facilities, and the employment of male guards to supervise female prisoners. I will discuss each of these in what follows, and would add the use of pepper spray and a more general discussion of prison rape.

**ELECTROSHOCK WEAPONRY:  
“EXTREME PAIN” AND “PSYCHOLOGICAL DETERRENCE”**

Some features of the criminal justice system practically invite abuses. Electroshock stun equipment, for example—stun guns, stun belts, and stun shields—have all the features of ideal torture tools.

Portable, easy to use, and with the potential to inflict severe pain without leaving substantial visible marks on the human body, electroshock stun equipment is, Amnesty International believes, particularly open to abuse by unscrupulous law enforcement officials.<sup>2</sup>

As of 2005, more than 7,000 US law enforcement agencies used Tasers,<sup>3</sup> brand-name stun guns that deliver five-second, 50,000-volt shocks either through barbed darts fired at the subject, or by direct contact. (Taser International’s training manual recommends making contact with the subject’s neck or groin.) One sheriff has described the Taser’s effect this way: “They call it the longest five seconds of their life. ... It’s extreme pain, there’s no question about it. No one would want to get hit by it a second time.” A weapons consultant agrees, noting that the pain is precisely what makes the device effective: “It’s the most extreme pain I have ever felt. You get total compliance because they don’t want that pain again.”<sup>4</sup>

Since 2001, at least 140 people have died after being shocked with a Taser.<sup>5</sup> Most were unarmed. In fact, a 2002 study examined 2,050 field applications across the country and found that in 79.6 percent of Taser uses, the subject was unarmed. Most commonly (in 37 percent of the cases), the subject’s “force level” was described by the police as “verbal non-compliance” (compared with 32.6 percent “active aggression,” 27.9 percent “defensive resistance,” and 2.7 percent “deadly assault”). In less than one-third of the cases (29.8 percent) did the police classify the incident as “violent.”<sup>6</sup>

Taser International claims that its product gives police an additional force option and decreases the reliance on firearms. There is some evidence for this claim: The sheriff’s office in Orange County, Florida adopted the Taser in the spring of 2000. By May 2002, the

Taser was the weapon most commonly used by the department (employed in 68 percent of force incidents). The use of dogs, pepper spray, and firearms dropped 21 percent. But the overall number of times force was used *increased* 37 percent. The additional force option may make cops less likely to pull their guns, but it makes them *more likely* to use force where none is warranted. Hence, a 2004 lawsuit by 11 former inmates of the Greene County (Missouri) Jail alleges a pattern of physical brutality and ritual humiliation, including the use of Tasers to force inmates to strip, bathe, remove jewelry, and stop talking.<sup>7</sup> Amnesty International relates reports of Tasers being used against children, the elderly, pregnant women, and people who have already been handcuffed.<sup>8</sup>

One relatively new—and particularly worrisome—variety of electroshock weaponry is the stun belt. This device fastens around a prisoner's waist and can be activated by remote control, sending a 50,000-volt shock through her body for eight seconds. The shock causes the victim's muscles to spasm, often causing her to fall (which can, of course, lead to serious injury). The shock is also fiercely painful, totally incapacitating, and undeniably humiliating.<sup>9</sup>

A Maryland cop described the jolt he received as part of his training: "you had nine-inch-nails and you tried to rip my sides out and then you put a heat lamp on me." An Ohio officer adds, "It felt like every muscle in my body short-circuited at the same time."<sup>10</sup>

In Gwinnett County, Georgia, sheriffs read a warning to prisoners before fitting them with a stun belt. The notice explains what will happen when the belt is activated, including immobilization and falling, and possible spontaneous defecation and urination. It also cites the conditions under which the belt will be used: if the prisoner makes any sudden moves, or tampers with the belt, or conceals his hands, or tries to escape, or fails to comply with the guard's commands.<sup>11</sup>

"Amnesty International believes that uniquely amongst stun equipment, the use of the stun belt, *even when not activated*, constitutes cruel, inhuman or degrading treatment or punishment as outlawed under international law."<sup>12</sup> That is because, for as long as the prisoner wears the belt, she must be acutely aware of the possibility of being shocked, perhaps without warning. According to some law enforcement agents, that is precisely the point. One officer states, "It's psychological deterrence. The anxiety of having it on seems to be the most effective tool." Or, as the president of Stun Tech Inc. reasons: "After all, if you were wearing a contraption around your waist that by the mere push of a button in someone else's hand, could

make you defecate or urinate yourself, what would you do from the psychological standpoint?"<sup>13</sup>

The possibilities for abuse are obvious, and have been demonstrated by people who clearly should have known better—including a California judge who ordered a defendant shocked for speaking out of turn at a hearing.<sup>14</sup>

Craig Shelton described his experience wearing a stun belt while being transported from Hutchinson Correctional Facility to Larned Correctional Mental Health Facility in Kansas. Shelton said he dozed off during the trip and then

woke up a short time later to a very intense shocking pain running through my body. This electrical current was so intense that I thought that I was actually dying. I had not been causing any trouble, I was belly chained, shackled, seat belted in, and there was a fence between the officers and me, so there was absolutely no reason for them to be using this device on me. The rest of the trip to Larned Correctional Mental Health Facility is kind of a blur to me. ...

When we arrived at Larned, I was unloaded from the van and taken to a holding cell. ... Once I was in the cell, several officers came into the cell and again I was shocked by the stun-belt. This electrical blast knocked me to the floor, and I could hear the officers that were around me laughing and making jokes.<sup>15</sup>

#### **PEPPER SPRAY: "REMORSELESS CRUELTY" AND "PAIN COMPLIANCE"**

Like stun technology, pepper spray is now practically ubiquitous in law enforcement circles. It is easy to carry, easy to use, and poses little risk to the officer. Derived from cayenne pepper, the spray (oleoresin capsicum) causes the eyes to tear and close involuntarily; it creates a painful burning sensation on the skin and mucus membranes; and it causes the airways to swell, restricting breathing. Even mild exposure can be incapacitating.<sup>16</sup> For all of these reasons, and because it leaves little in the way of long-term evidence, pepper spray is liable to be abused, and makes a convenient tool for torturers.

One inmate, "RES," described the use of pepper spray in the Arizona State Prison:

Corrections officers half carr[ied] and half drag[ged a prisoner] into the visitation area [where] myself and eight

other inmates were being detained. ... It was evident he had been sprayed with a great amount of chemical agent as it was dripping from his hair and he was soaked in it, he had his hands handcuffed behind him and was being carried by his lower arms. ... [The prisoner] was crying out in pain and begging the officers to relieve the strain on his shoulders and wrist[s]. Both of [his] knees were bleeding as he had been dragged on them, and he was wearing no pants. [He] was placed in [a] small holding cell where he continued to scream and cry out in pain. [He] had been sprayed in the area of his penis, anus, and scrotum [and] was begging to be allowed to shower to remove the chemical agent. [He] was in such pain he lost control of his bowels and bladder. ... [The prisoner] was then "escorted" to the work site where he was confined to a small pen for approximately five hours. [He] continued to scream and cry out, begging the officers for help or a chance to wash off. ...

I myself was sprayed with pepper spray ... and it was approximately ten hours before I was allowed to wash off the chemical agent. This resulted in burns and blisters on my arms, face, chest, and feet. For the entire ten hours, it felt like I was being boiled alive. When you are forced to stand in the sun, with no shelter from the sun, the sweat from your body continues to reactivate this chemical agent so you remain in extreme pain the entire day.<sup>17</sup>

On three occasions in September and October 1997, sheriff's deputies in Humboldt County, California, and members of the Eureka Police Department swabbed pepper-spray fluid directly into the eyes of nonviolent anti-logging demonstrators who had locked themselves together in an act of civil disobedience.<sup>18</sup> Amnesty International called the tactic "deliberately cruel and tantamount to torture,"<sup>19</sup> and the San Francisco Chronicle opined:

The videotapes show deputies acting with the remorseless cruelty of police state Torquemadas, calmly applying the caustic spray as the protesters writhed, screamed, and pleaded with them to stop. If it was not torture, as the protesters claim, it came awfully close.<sup>20</sup>

Yet US District Court judge Vaughn Walker dismissed a lawsuit seeking to bar the practice, stating that the sheriffs "acted reasonably in using [pepper spray] as a pain compliance technique in arresting plaintiffs." Walker further described the application as "merely the infliction of transient pain without the significant risk

of physical injury.” Tony Serra, a lawyer for the protesters warned that the ruling offered “a green light to torture.”<sup>21</sup> And in October 1998, deputies from the same department used the tactic again.<sup>22</sup> Clearly, pepper spray—and the unbearable pain it causes—proved its utility as a tool of political control.

**CRUEL RESTRAINTS:  
“PAINFUL AND TORTUOUS PUNISHMENT”**

Another increasingly common piece of disciplinary equipment is the restraint chair, a simple device that uses straps attached to the legs, arms, and torso to constrain a person’s movements.<sup>23</sup> Though it is intended for use on violent inmates who pose an immediate threat, in practice the chair is often used to punish minor infractions of administrative rules, or even to persecute inmates for asserting their rights. In the Sacramento County jail, for example, between 1995 and 1997, inmates were relegated to restraint chairs for responding slowly to guards’ orders, complaining about jail conditions, and asking to speak to a lawyer. Many of those so restrained were also stripped naked and placed in hoods. They were generally denied bathroom access, food, and water. Sexual harassment and taunting were common. And some were injured when guards fastened the restraints too tightly.<sup>24</sup>

Katherine Martin’s treatment was typical of the Sacramento jail at the time: Martin, a 106-pound woman with a heart condition, was arrested for (but never convicted of) public drunkenness. Sheriff’s deputies confined her to a restraint chair for eight and a half hours, during which time they refused to give her water or bathroom access and mocked her when she urinated on herself. Martin’s restraints were so tight they broke her skin and caused nerve damage.<sup>25</sup>

Abuse of the restraint chair seems to be so common that the idea of its acceptable use becomes difficult to credit. In 1996, the US Justice Department sued the Iberia Parish Jail in Louisiana over its use of the chair, calling it “cruel and unusual punishment and physical and mental torture.”<sup>26</sup> Jail guards left prisoners in the restraint chair for hours, often in their own shit; one inmate was kept in the device for a full eight days. That same year, a separate Justice Department investigation found that sheriffs in Maricopa County Jails in Arizona regularly used stun guns against prisoners in restraint chairs, in at least one case, they shocked the prisoner’s testicles. One inmate, Scott Norberg, died after guards strapped him



into a restraint chair, gagged him, and zapped him with stun guns 21 times.<sup>27</sup>

Around the country, at least 11 others have died in incidents involving these chairs. In March 1997, to cite just one case, Daniel Sagers died after jail guards in Osceola County, Florida, strapped him into a chair and beat him. The guards used a towel to force back his head, applying such pressure that they damaged his brain stem in the process. One guard was convicted of manslaughter and received a year in prison. Two others pleaded no contest to charges of battery and were placed on probation.<sup>28</sup>

Other restraints are used to much the same effect. Until a court halted the practice in 1997, the Fountain Correctional Center in Alabama used a "hitching post" to discipline prisoners who were late to their job assignments or accused of slacking off. This punishment, which was reportedly reserved for Black inmates, left the prisoner standing in the hot sun, handcuffed to a triangular rail four and a half feet off the ground, without water, food, or toilet access, for as long as five hours. A federal magistrate described it as "short of death by electrocution ... the most painful and tortuous punishment administered by the Alabama prison system."<sup>29</sup>

"Y. M.," a prisoner in Connecticut, wrote the American Friends Service Committee about his treatment:

In their attempts to break you, like they used to break slaves, they chained me butt naked to a metal bed, cold air blowing on me, no heat in the cell for more than eight hours. ... This female officer kept coming to my door every fifteen minutes gawking at me.<sup>30</sup>

Other prisoners report being kept in these kinds of "four-point restraints"—their arms and legs spread far apart—for as long as five days.<sup>31</sup> Physicians for Human Rights have linked the use of the four-point restraints to severe back and neck pain, and even nerve damage.<sup>32</sup>

Utah authorities kept one inmate in four-point restraints for 12 weeks in 1995. Four times each week, he was removed from his bonds and allowed to shower. Otherwise he was forced to urinate and defecate where he lay. In another case, in March of 1997, Michael Valent, a mentally ill man, spent 16 hours strapped naked in a restraint chair and died soon after. Lane McCotter, the director of the Utah State Prison system, resigned following Valent's death. Yet six years later, McCotter was back in the incarceration business, overseeing renovations at Abu Ghraib.<sup>33</sup>

**TOTAL LOCKDOWN:  
CONTROL UNITS AND SUPERMAX PRISONS**

Just as practices, policies, and personnel moved between Iraq, Afghanistan, and Guantánamo Bay, we've seen similar migration between domestic law enforcement and the military. It is currently popular to talk about this in terms of militarizing the police and prisons, but the influence also runs in the opposite direction.<sup>34</sup> Lane McCotter, Charles Graner, and Chip Frederick all began their careers in domestic prisons and ended up working at Abu Ghraib. Tasers are used both by the local sheriff and by US Special Forces, often in the same abusive manner. Police SWAT teams were modeled after military units, then adapted for use in prisons, and they have since been cycled back as Internal Reaction Forces in military prison camps. And the control unit—the “prison within a prison”<sup>35</sup>—served as the model for the discipline block at Guantánamo Bay.

Two prison-system bureaucrats, Thomas Stickrath and Gregory Bucholtz, write of the control unit's role in terms that echo both Michel Foucault and Guantánamo's Major General Geoffrey Miller:

At a prison level, it is easy to discern the numerous mechanisms available to encourage inmate compliance with the rules of the institution. Restrictions related to visits, commissary, and recreation and temporary confinement to segregation are only a few of the mechanisms available to promote conformity. For the consistently disruptive and predatory inmates, their behavior usually results in repeated sanctions to segregation and upgrades to higher security levels. Eventually, obtaining social control may involve placing these inmates in supermax confinement out of necessity.<sup>36</sup>

The first supermax facility was the federal penitentiary in Marion, Illinois, which went on “total lockdown” after two guards and an inmate were murdered in 1983. Today, more than 60 prisons in 36 states use the approach developed at Marion, and more than 20,000 prisoners are kept in long-term supermax confinement.<sup>37</sup>

Human Rights Watch describes a typical cell:

SHU [Secure Housing Unit] cells, which are approximately eighty square feet in size (seven by twelve feet), are shaped like a rectangle with one corner shaved off. They have no windows, leaving prisoners without any glimpse of the outside world. Each cell contains a concrete bed with a plastic-covered mattress, a shelf by the bed, a fixed table and stool with no back support, and a stainless steel combination sink and toilet. Inmates are

not supposed to attach anything to cell walls, although we noticed a great degree of lenience in the application of this rule. The cell's forty-watt fluorescent light is located over the toilet. Between 9:00 p.m. and 5:00 a.m. the prisoner controls it; the rest of the time it is controlled by corrections staff, and is normally kept on. Even when the main light is turned off, however, a seven-watt "night light" remains lit.<sup>38</sup>

Prisoners are confined to these cells 23 hours a day, and are usually denied any opportunity to participate in educational, vocational, or religious programs.<sup>39</sup> For one hour each day, they are allowed to exercise in the rec yard, though "yard" is something of a euphemism. It is, in fact, a small paved area surrounded by high walls. Human Rights Watch comments that "standing in the outdoor area is akin to being at the bottom of a well."<sup>40</sup>

Control units may mark the point at which confinement itself becomes torture. Angela Tucker, an inmate in the Valley State Prison control unit, states: "I thought I had seen most of what they can dish out. But this here is the worst. I never seen anything like it. Living here is like nothin' you could ever begin to imagine. It's like living in a black hole."<sup>41</sup>

Perhaps the most harmful aspect of supermax confinement is the stultifying isolation. The prisoners are nearly always alone. They spend their days trapped in their cells, removed from the general prison population and without outside stimulation or social contact. Meals arrive through a slot in the door, and are eaten in the cells. For most of these inmates, their only human contact is with the guards.

It is not hard to understand the psychological consequences of such treatment. Prisoners in isolation commonly experience mood swings, crying spells, hallucinations, and paranoia. Many try to injure themselves as a result.<sup>42</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment explains: "It is generally acknowledged that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects resulting in deterioration of mental faculties and social abilities."<sup>43</sup> Or, as one corrections instructor told Ted Conover: "If you ask me, that's a recipe for a junkyard dog."<sup>44</sup>

The prisoners agree. Inmates at the Boscobel, Wisconsin super-maximum facility have called the prison "an incubator of psychosis." Their 2001 class-action lawsuit eventually forced the removal of the prison's mentally ill population—altogether, about one-third of the

prisoners, including several minors.<sup>45</sup> Ed Garvey, a lawyer for the prisoners, compared conditions there with those in military prisons: "It was interesting that the International Red Cross was upset that prisoners [at Guantánamo] were held more than thirty days in isolation and for twenty-three out of twenty-four hours. ... In Boscobel, that's the case every day."<sup>46</sup>

In principle, these facilities are reserved for the "worst of the worst," for inmates who have repeatedly committed serious violations during their sentences and who are presumed to pose a threat to prison staff, other inmates, or themselves. In practice, however, the costs associated with building, staffing, and maintaining these facilities demand that they find tenants. Likewise, when standard facilities become overcrowded and supermax cells sit empty, the solution, from a bureaucratic standpoint, must seem obvious. The result is that supermax prisons house large numbers of prisoners who do not meet the official criteria for the more restrictive, and more punitive, conditions. A 1995 congressional report on the supermax prison in Marion, Illinois, found that 80 percent of the prisoners did not meet the state's security threat criteria.<sup>47</sup>

Unfortunately, the very fact that one has been sent to such a facility, even in the absence of previous misconduct in custody, stigmatizes the inmate and legitimates official abuse. Human Rights Watch worries,

The simple fact that prisoners have been labeled the "worst of the worst" and are subject to extreme controls and have minimal and highly structured interactions with staff encourages correctional officers to view them in a dehumanizing way and to treat them more harshly.<sup>48</sup>

In this way, the institution's practices become self-justifying. Sociologist Erving Goffman identifies this presumption as part of the "interpretative scheme of the total institution":

The staff hav[e] the notion that entrance is *prima facie* evidence that one must be the kind of person the institution was set up to handle. A man in a political prison must be traitorous; a man in a prison must be a lawbreaker; a man in a mental hospital must be sick. If not traitorous, criminal, or sick, why else would he be there?<sup>49</sup>

We've seen similar reasoning employed in the military prisons in Iraq, Afghanistan, and Guantánamo Bay, as well as at the immi-

grant detention centers described in the previous chapter. Goffman explains,

This automatic identification of the inmate is not merely name-calling; it is at the center of a basic means of social control. ... Having to control inmates and to defend the institution in the name of its avowed aims, the staff resort to the kind of all-embracing identification of the inmates that will make this possible. The staff problem here is to find a crime that will fit the punishment.<sup>50</sup>

Given the conditions of prison life, it is often easy to do just that. The combination of intensive regulation and minimal rights creates new opportunities for "misconduct." Rules become more and more strict, making full compliance increasingly difficult. As with "zero-tolerance" police efforts in America's cities, as the range of acceptable behavior becomes ever more narrow, it is inevitable that everyone stands in technical violation of the rules at some time. Such unyielding regulation necessarily increases the role of officer discretion and multiplies the opportunities for biased—even discriminatory—law enforcement. *Because* everyone breaks the rules, it is simply not possible to detect or punish every transgression. The coercive attention of the authorities will fall, for the most part, where it always has—against the poor and people of color—in a vicious cycle of surveillance and punishment.

For example, when the police stop a person on the street for jaywalking or carrying an open container, they will often take the opportunity to search them. If the suspect has drugs or a weapon, more charges will follow, leading to more state scrutiny, whether in jail or on probation. Once in the system, the inmate is subject to rules governing almost every aspect of his life and is afforded practically no privacy and only the thinnest semblance of due process. It thus becomes exceedingly easy to be pushed from one level of supervision to the next, at each point finding oneself afforded less leeway and under more intensive surveillance. As rules become more restrictive and state scrutiny more pervasive, violations become both harder to avoid and harder to conceal. One predictable result is that enforcement becomes increasingly capricious, even arbitrary, and takes a more punitive, often violently harsh, form.

Inmates at Red Onion Prison in Wise County, Virginia, report that guards use Tasers to punish them for offenses such as refusing to return a paper cup after a meal, kicking their cell door, responding too slowly to the commands of guards, and taking an insolent tone when speaking with authorities. Other common punishments



include the use of restraints, strip cells (with no furnishings or mattresses), and the denial of toilet paper. Human Rights Watch observes that at Red Onion, "security procedures imposed on all inmates in segregation exceed those reasonably necessary for safety; their real purpose may simply be to intimidate and degrade."<sup>51</sup>

This whole cycle of criminalization is largely reinforced by a racial regime based on white supremacy. In 2000, 83 percent of those housed in Pelican Bay's Secure Housing Unit were men of color, mostly Latino.<sup>52</sup> That same year, in California's Valley State Prison for Women, 61.4 percent of those in the Secure Housing Unit were women of color, the largest portion of them Black.<sup>53</sup> Control units are also used to harass jailhouse lawyers, prisoners who file grievances, political prisoners, and inmate activists. Thus, the state uses many of the same tools to maintain racial stratification as to punish dissent and minimize resistance. This reflects something of the control unit's overall social function: the punishment regimen within the prison works to preserve existing power arrangements, both inside the institution itself and in the larger society. Ralph Arons, the former warden at Marion, is forthright about the political value of these facilities: "The purpose of the Marion Control Unit is to control revolutionary attitudes in the prison system, and in the society at large."<sup>54</sup>

#### **MALE GUARDS IN WOMEN'S PRISONS: "RAPE ON A MASS SCALE"**

Imprisonment is itself degrading. It is marked by a pronounced lack of power over even the most basic elements of life. It is a regimen of imposition and deprivation, isolation and overcrowding. Food, fresh air, sunlight, social contact, showers, information and entertainment, meaningful work, medical care—all these are restricted, rationed, doled out as privileges, or prohibited altogether. Privacy and free movement can hardly be said to exist. Rote labor, isolation, and pain can be readily imposed. To be a prisoner is to be subject to control. It is also, as a means to such control, to be subject to violence. The threat is ever present.

One cannot maintain these conditions without also creating opportunities for abuse. It is not simply that violence is the means by which the prison does its work, producing obedience by administering a measure of force. Violence is also the product of the prison system. Torture is not only the means by which the state gains control, it is also an expression of triumphant power. The more absolute the power of the state, the more total its control over its subjects,

the more likely abuse. This is not simply violence in the pursuit of power, it is violence as the exercise of power. At times, it may even constitute the reward of power.

Perhaps nowhere is this clearer than in the treatment of women. The institutional setting, with its depersonalized regulation of nearly every aspect of the inmates' lives, can reduce the prisoners, in the eyes of the guards, to mere bodies rather than persons. Such a perception is, on its own, dangerous for the prospects of human rights. But it takes on a particularly egregious character when combined with the ideology of male dominance. Female prisoners are not only reduced to bodies, but to sexualized bodies. The power that confines and controls them is not only state power, but typically male power; its use of force comes not just in the form of violence but, often, sexualized violence.

Hence, the routines of prison life are translated into rituals of sexual power. The constant surveillance represents, not only the disciplining view of the state, but also a specifically male gaze. Routines of surveillance and contact become occasions for harassment, and sometimes assault. Obvious abuses then appear as informal extensions of officially sanctioned procedures, such as the use of male guards to patrol the living quarters of female prisoners (including sleeping, bathing, and toilet facilities), to conduct pat-down searches and in some cases strip searches, and to forcibly extract women from their cells and place them in restraints.<sup>55</sup> Worse, despite the obvious potential for these practices to cross over into explicit abuse, prison authorities make only minimal efforts to control such high-risk situations, offering little in the way of training, supervision, or enforcement of the existing regulations.

Human Rights Watch warns:

In women's prisons across the United States, ill-trained male officers guard female prisoners with little appropriate guidance or oversight regarding sexual misconduct. The result is a custodial environmental that is highly sexually charged. Both prisoners and advocates told us consistently that male officers regularly comment on the female prisoners' body parts and treat them to a barrage of degrading physical references and gestures. It is in this context that the officers further step over the line with prisoners and engage in rape, sexual assault, other forms of sexual contact and inappropriate visual surveillance of the women while they are dressing, showering or using the toilet.<sup>56</sup>

Claudia Johnson, a middle-aged white woman at the Valley State Prison for Women in Chowchilla, California, regularly refused to cooperate with strip searches. The first time she refused, guards locked her in a shower for two days, without food or blankets. Later, they began using cell extraction teams to conduct the searches. Eight men in riot gear would raid her cell and hold her down, while a female guard tore away Johnson's clothing. Johnson says that the guards routinely made threats and vulgar comments while she was immobilized. She adds: "It is about humiliation and total loss of dignity. I don't care what they call it. I call it rape."<sup>57</sup>

Yvonne Smith, a 21-year-old Black prisoner at VSPW, was placed in the secure housing unit after a suicide attempt. She also describes the routine use of strip searches every time she left her cell:

They don't do this because of "safety and security of the institution;" they do it for humiliation. Some of them really like it. There's nothing we can do between our cells and the shower, no way we can pick anything up. They're with us, watching us, the whole time. They are just trying to break us down.<sup>58</sup>

A 1997 US Department of Justice investigation found widespread abuse in women's prisons in Arizona, including rape, other touching, and "without good reason, frequent, prolonged, close-up and prurient viewing, during dressing, showering and use of toilet facilities."<sup>59</sup> In 1995, the Justice Department initiated an investigation into conditions in Michigan's women's penitentiaries. The subsequent report notes:

Nearly every inmate we interviewed reported various sexually aggressive acts of guards. A number of women reported that officers regularly "corner" women in their cells or on their work details in the kitchen or laundry room and press their bodies against them, mocking sexual intercourse. Women described incidents where guards exposed their genitals while making sexually suggestive remarks.<sup>60</sup>

"Barrilee," an inmate of a private prison in Arizona, wrote to Prison Legal News to complain about the guards' abuse of female prisoners. She said that a senior officer gave her cell mates a marijuana cigarette, then came back with other guards to search the cell. He offered leniency if the women would perform a striptease. They did, and the dancing led to groping, then to oral sex, and then to intercourse. The Corrections Corporation of America suspended

several guards once the incident came to light.<sup>61</sup> Similar practices have been reported in the District of Columbia women's jail, where, in addition to coercing inmates to perform strip shows, guards have been accused of extorting sexual favors in exchange for visitation privileges, favorable job assignments, and soap.<sup>62</sup> In 1992, 119 prisoners at a women's prison near Hardwick, Georgia, complained of sexual abuses including forced stripping, sodomy, rape, and coerced abortions. Fourteen former employees, including a former deputy warden, were indicted.<sup>63</sup>

It would be a mistake to view these abuses as the lust or licentiousness of guards simply getting the better of their good sense, or as the sexual deprivation of the inmates producing a mass of willing accomplices rather than victims. As Elizabeth Bouchard, a prisoner in Massachusetts, says, "It's not consensual—they have the power, the uniform, the badge."<sup>64</sup>

Christian Parenti notes:

By profession COs [corrections officers] are trained to physically and psychologically dominate prisoners. In a world where sex is often infused with motifs of domination, it is no wonder that the combination of male keepers and female charges translates into rape on a mass scale.<sup>65</sup>

The prison structures, supports, and legitimates this conjoining of coercive force and misogynist sexuality<sup>66</sup>—but it did not invent it. It need not train male guards to see the women under their control as sexual objects, as proper targets for their aggression, or as prey. They have already received that training, all of their lives, as men in a sexist society. They do not need to be told how to use sex to humiliate and intimidate women, or how to use their power to reap sexual rewards; they have seen it done their whole lives, in the "free" world, outside the prison walls.

#### **PRISON RAPE: GENDERING THE VICTIM**

What is noteworthy, and perhaps most troubling, about such sexual abuses is not how removed they are from the standard operations of an ideal penitentiary, but rather, on the contrary, how near they are. It is not the degree to which they clash with the norms of incarceration or the degree to which they frustrate the aims of the institution that demands our attention, but how well they resonate, and how neatly they fit. The basic elements of incarceration—the constant surveillance, the imbalance of power, and to some degree the physi-

cal fact of confinement itself—take on sexual overtones when male guards are used to control female prisoners. State power and male supremacy become productively confused; they bolster one another, each borrowing from the other's strategies, tactics, symbolism, and authority.

With male guards and female prisoners, this is, sadly, too predictable. In the women's prisons, sexual abuse effectively mirrors the gendered hierarchy of the larger sexist society. Both in prison and outside of it men use power to get sex, and use sex (and especially sexual violence) to gain, and keep, and exercise their power. Such dynamics are apparent at both the individual level and in the aggregate. Rape, domestic violence, and sexual harassment are not only personal affronts, but political exercises both born of and reinforcing the control men collectively exercise over women. In the women's jail, we see a concentrated version of the power relations that exist throughout our society—male guards and female prisoners, on both sides of the prison wall.

But, perhaps more surprisingly, we see something very similar in the *men's* prisons as well. There, too, sexual violence serves to stratify the institutional population—but without access to the pre-fabricated caste system of “male” and “female.” Parenti explains:

Rape in male prisons is ... the process by which the “normality” of a sexist world is reproduced in an all-male purgatory. In the big house, layers of collective, individual, and institutional violence act in concert to culturally manufacture prison's “second sex” and thus reproduce the binary gendered world of the outside. ... Thus, jailhouse rape is more than sadistic thrills: it creates a gender and, therefore, a division of labor and a set of class relations.<sup>67</sup>

Human Rights Watch adds:

Prisoners unable to escape a situation of sexual abuse may find themselves becoming another inmate's “property.” The word is commonly used in prison to refer to sexually subordinate inmates, and it is no exaggeration. Victims of prison rape, in the most extreme cases, are literally the slaves of the perpetrators. Forced to satisfy another man's sexual appetites whenever he demands, they may also be responsible for washing his clothes, massaging his back, cooking his food, cleaning his cell, and myriad other chores. They are frequently “rented out” for sex, sold, or even auctioned off to other inmates, replicating the financial aspects of traditional slavery. Their most



basic choices, like how to dress and whom to talk to, may be controlled by the person who "owns" them. Their name may be replaced by a female one.<sup>68</sup>

In this context, rape is not only an assault; it is not only torture. Rape is also a means of structuring prison society. It is used, as we've seen, to discipline inmates whom guards or administrators deem troublesome. And in male prisons it structures the relations between prisoners, establishing and enforcing an inmate hierarchy. This system of stratification largely reflects the domination of men over women in the larger society, though it substitutes a set of subordinated masculinities for the more usual subordination of women. At the top of this hierarchy is a "hegemonic masculinity" that both defines and dominates the others. In prison, "Men," Stephen Donaldson tells us, "are defined by a successful and continuing refusal to be sexually penetrated. A single instance of being penetrated, whether voluntary or not, is universally held to constitute an irreversible 'loss of manhood.'"<sup>69</sup>

The broadest implication of this analysis is that sexual violence is not merely a *consequence* of the gendered hierarchy, it is also a means of *producing* it. And this is true both inside and outside the prison. A chief difference between the experience of the male prisoner and that of the female prisoner is that the male will likely feel this threat for the first time.<sup>70</sup> For him, rape is a fact of prison life. For women, the threat they face in prison is only a variation of the threat they face in society overall. Rape, or its threat, is a fact of life—period.

Another, perhaps secondary, difference concerns the role of the prison staff. The institutional attitude toward rape is largely the same in men's institutions as in women's. But in women's prisons the rapists are more likely to be the guards.<sup>71</sup> In men's prisons, the crime itself is usually committed by prisoners, though it is facilitated by the staff's apathy, and sometimes by their active complicity. For instance, "M.R.," a gay white male in an Arkansas prison, told Human Rights Watch that, when he arrived in the Cummins Unit in 1992, at the age of 21, a guard sold him to an older inmate for two cartons of cigarettes. The guard arranged to transfer M.R. to the other inmate's cell, where he was raped. Later, he says,

I had no choice but to submit to being Inmate B.'s prison wife. Out of fear for my life, I submitted to sucking his dick, being fucked in my ass, and performing other duties as a woman, such as making his bed. In all reality, I was his slave, and the officials of the Arkansas Department of Corrections under the "color of law" did absolutely nothing.<sup>72</sup>

Rape is not simply an individual crime (though it is that). It is also a reflection and a product of institutional arrangements and social stratification. Social exclusion and administrative indifference, the powerlessness of prisoners, male dominance over women, and the power and the interests of the carceral institution—all of these are present in, and communicated through, the act of rape. Rape may surpass even murder as an undiluted expression of pure, total power. And that makes it an ideal technique of torture.

## NOTES

<sup>1</sup> Amnesty International, "United States of America: A Briefing for the UN Committee Against Torture" (May 2000), 3. For details on international prison standards, see UN Office of the High Commissioner for Human Rights, "Standard Minimum Rules for the Treatment of Prisoners" (adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955; approved by the Economic and Social Council, 1957 and 1977), [http://www.unhchr.ch/html/menu3/b/h\\_comp34.htm](http://www.unhchr.ch/html/menu3/b/h_comp34.htm) (accessed October 22, 2004).

<sup>2</sup> Amnesty International, "Briefing," 9.

<sup>3</sup> Robert Anglen, "Taser Shocks Ruled Cause of Death," *Arizona Republic*, July 30, 2005, <http://www.azcentral.com/arizonarepublic/news/articles/0730taser30.html> (accessed August 5, 2005).

<sup>4</sup> Quoted in Amnesty International, "United States of America: Excessive and Lethal Force? Amnesty International's Concerns About Deaths and Ill-Treatment Involving Police Use of Tasers" (November 30, 2004).

<sup>5</sup> Anglen, "Taser Shocks Ruled Cause of Death."

<sup>6</sup> Amnesty International, "USA: Excessive and Lethal Force?" These statistics are in keeping with the cops' overall tendency to use force out of proportion to the threat they encounter. For a detailed analysis, see Kristian Williams, *Our Enemies in Blue: Police and Power in America* (Brooklyn, NY: Soft Skull Press, 2004), 15, 22–23.

<sup>7</sup> Amnesty International, "USA: Excessive and Lethal Force?"

<sup>8</sup> *Ibid.* The *Seattle Post-Intelligencer* reports that between January 2003 and June 2004, the Seattle Police tased 269 people, 75 percent of whom were unarmed and 3 of whom were already in handcuffs. During the same period, King County sheriff's deputies tased 267 people, 83 percent of whom were unarmed and 10 of whom were cuffed. Among the victims: a teenager who ran away when confronted about her bus fare; a 71-year-old man who refused to get in the patrol car; a pregnant woman in handcuffs who kicked the seat of the squad car because deputies wouldn't let her out to use the bathroom; and a deaf man who could not hear the order to stop walking. Phuong Cat Le and Hector Castro, "Police Are Too Quick to Grab for Taser's Power, Say Critics," *Seattle*

*Post-Intelligencer*, November 30, 2004, [http://seattlepi.nwsource.com/local/201700\\_taser30.html](http://seattlepi.nwsource.com/local/201700_taser30.html) (accessed January 2, 2006).

- <sup>9</sup> Amnesty International, "United States of America: Cruelty in Control? The Stun Belt and Other Electro-Shock Equipment in Law Enforcement" (June 8, 1999).
- <sup>10</sup> Quoted in *Ibid.* One officer who was shocked with a stun shield did not survive to describe the sensation. Harry Landis, a Texas corrections officer, died on December 1, 1995, after receiving two 45,000-volt shocks during a training exercise. Jimmy Wood, the Coryell County justice of the peace remarked: "Landis was in fairly decent shape ... [though] he did have a history of heart problems. But was he going to die this day if he didn't experience an electric shock? No, he wasn't." Quoted in Anne-Marie Cusac, "Stunning Technology: Corrections Cowboys Get a Charge Out of Their New Sci-Fi Weaponry," *Progressive*, June 1996, 18.
- <sup>11</sup> Amnesty International, "Cruelty in Control?"
- <sup>12</sup> *Ibid.* Emphasis in original.
- <sup>13</sup> Quoted in Amnesty International, "Cruelty in Control?"
- <sup>14</sup> Amnesty International, "Cruelty in Control?"
- <sup>15</sup> Quoted in Amnesty International, "Cruelty in Control?"
- <sup>16</sup> National Institute of Justice, "Oleoresin Capsicum: Pepper Spray as a Force Alternative" (US Department of Justice, Office of Justice Programs: March 1994), 1.
- <sup>17</sup> Quoted in *Torture in US Prisons: Evidence of US Human Rights Violations*, ed. Julia Lutsky (Newark, NJ: American Friends Service Committee, New York Metropolitan Region, Criminal Justice Program, 2000), 17. Emphasis in original.
- <sup>18</sup> Jaxon Van Derbeken, "Pepper Spray in the Eyes—Protesters Sue Police; Humboldt Detectives Accused of Torture," *San Francisco Chronicle*, October 31, 1997.
- <sup>19</sup> Amnesty International, "United States of America, Rights for All: Race, Rights and Police Brutality" (September 1, 1999), 23.
- <sup>20</sup> "Pepper Spray Torture [editorial]," *San Francisco Chronicle*, November 1, 1997.
- <sup>21</sup> Quoted in Alex Barnum and Jaxon Van Derbeken, "Logging Foes Lose Challenge to Pepper Spray Tactic: Judge's Ruling Lets Cops Daub Chemical in Protesters' Eyes," *San Francisco Chronicle*, October 27, 1998. Parentheses in original.

The contention that pepper spray poses only a slight risk to those exposed to it has never been adequately demonstrated, and there are good reasons to think otherwise. During the 1990s, at least 90 people died in police custody after being exposed to pepper spray. Amnesty International, "Briefing," 11.

In December 2000, five cops in Orange, New Jersey, were convicted on federal civil rights charges in a case involving a pepper-spray-related death. Earl Faison was mistakenly arrested and accused of killing a police officer. Two cops beat him while he was handcuffed and a third—Lieutenant Thomas Smith—pepper sprayed him. Faison suffered an asthma attack, and within an hour he was dead. Andrew Meyer and Bob Edwards, “Federal Jury in Newark Convicts Five Orange, New Jersey, Police Officers of Violating Civil Rights of Suspect Who Died in Custody,” *Morning Edition*, NPR, December 20, 2000.

<sup>22</sup> Amnesty International, “Race, Rights and Police Brutality,” 23. A jury eventually sided with the protesters—sort of. In April 2005, a jury ruled that the direct application of pepper spray did constitute excessive force, and awarded the eight plaintiffs \$1 each. Stacy Finz, “Logging Protesters Win Pepper Spray Case,” *San Francisco Chronicle*, April 29, 2005.

<sup>23</sup> A photograph of the chair, and its victim—a juvenile prisoner at Abu Ghraib—appeared in the November 21, 2005 issue of *Newsweek*, <http://www.msnbc.msn.com/id/10020629/site/newsweek/> (accessed January 2, 2006).

<sup>24</sup> Amnesty International, “Briefing,” 21–22; Amnesty International, “United States of America, Rights for All: ‘Not Part of My Sentence’; Violations of the Human Rights of Women in Custody (March 1999), 70.

<sup>25</sup> Anne-Marie Cusac, “The Devil’s Chair,” *Progressive*, April 2000, 26.

<sup>26</sup> Quoted in *Ibid.*, 28.

<sup>27</sup> Cusac, “Devil’s Chair,” 28. Maricopa County is famous for its “tough” approach to crime. Some inmates are kept in tents with little protection from the elements, including scorching temperatures far above 100 degrees. Anne-Marie Cusac, “Abu Ghraib, USA,” *Progressive*, July 2004, 20.

For a time, the jail used webcams to broadcast live footage of female prisoners, including strip searches and the use of the toilet. Many of the images were later copied onto porn sites. Jamie Fellner, “Torture in U.S. Prisons,” in *Torture: Does It Make Us Safer? Is It Ever OK? A Human Rights Perspective*, ed. Kenneth Roth and Minky Worden (New York: New Press, 2005), 176.

<sup>28</sup> Cusac, “Devil’s Chair,” 23.

<sup>29</sup> Quoted in Michael Welch, *Punishment in America: Social Control and the Ironies of Imprisonment* (Thousand Oaks, CA: Sage Publications, 1999), 197.

<sup>30</sup> Quoted in *Torture in US Prisons*, 12.

<sup>31</sup> *Torture in US Prisons*, 12.

<sup>32</sup> Welch, *Punishment in America*, 203.

<sup>33</sup> Cusac, “Abu Ghraib, USA,” 20–21.

McCotter's business partner in Iraq, Gary DeLand, had likewise resigned from the Utah Department of Corrections. DeLand had repeatedly been accused of denying inmates medical care. Janis Karpinski, *One Woman's Army: The Commanding General of Abu Ghraib Tells Her Story* (New York: Miramax Books, 2005), 177.

<sup>34</sup> Elsewhere, I have written extensively about the militarization of the police. See Williams, *Our Enemies in Blue*, especially Chapter 9, "Your Friendly Neighborhood Police State."

<sup>35</sup> Thomas J. Stickrath and Gregory A. Bucholtz, "Supermax Prisons: Why?" in *Supermax Prisons: Beyond the Rock*, ed. Donice Neal (Lanham, MD: American Correctional Association, 2003), 1.

The "prison within a prison" analogy is apt, since the control unit occupies roughly the same place in the disciplining system of a prison as the prison occupies in that of the society as a whole. Recall that prisoners in Iraq were threatened with transfer to Guantánamo; prisoners in Guantánamo were threatened with isolation. Thus, the carceral continuum exists within the prison system while simultaneously situating the prison in the larger social system.

<sup>36</sup> *Ibid.*, 11–12.

<sup>37</sup> *Ibid.*, 3; Welch, *Punishment in America*, 203; and Fellner, "Torture in U.S. Prisons," 175.

<sup>38</sup> Human Rights Watch, *Cold Storage: Super-Maximum Security Confinement in Indiana* (New York: Human Rights Watch, 1997), 26.

<sup>39</sup> Angela Y. Davis and Cassandra Shaylor, "A Question of Control," *San Francisco Chronicle*, April 9, 2000; and Cassandra Shaylor, "'It's Like Living in a Black Hole': Women of Color and Solitary Confinement in the Prison Industrial Complex," *Political Environments* 7 (Fall 1999/Winter 2000), 23.

<sup>40</sup> Human Rights Watch, "Cold Storage," 27.

<sup>41</sup> Quoted in Shaylor, "Living in a Black Hole," 23.

<sup>42</sup> Davis and Shaylor, "Question of Control."

<sup>43</sup> Quoted in Human Rights Watch, "Cold Storage," 64. Physicians for Human Rights summarizes the medical literature: "In the 1950s and 1960s, studies demonstrated that short-term isolation caused an inability to think or concentrate, anxiety, somatic complaints, temporal and spatial disorientation, deficiencies in task performance, hallucinations, and loss of motor coordination. The findings of contemporary research are consistent with the earlier findings of solitary confinement's harmful consequences. Effects include depression, anxiety, difficulty with concentration and memory, hypersensitivity to external stimuli, hallucinations and perceptual distortions, paranoia, and problems with impulse control. People who are exposed to isolation for the first time develop 'a predictable group of symptoms, which might almost be called



a "disease syndrome." The symptoms include bewilderment, anxiety, frustration, dejection, boredom, obsessive thoughts or ruminations, depression, and in some cases, hallucination.' ... Case studies of supermax prisoners provided by prison psychiatrists describe a range of symptoms resulting from long-term isolation, including appetite and sleep disturbances, anxiety, panic, rage, loss of control, paranoia, hallucinations, suicidal ideation, and self-mutilation." Physicians for Human Rights, "Break Them Down: Systematic Use of Psychological Torture by US Forces" (2005), [www.phrusa.org](http://www.phrusa.org) (accessed December 20, 2005), 60-61, 63.

<sup>44</sup> Quoted in Ted Conover, *Newjack: Guarding Sing Sing* (New York: Random House, 2000), 209.

<sup>45</sup> Cusac, "Abu Ghraib, USA," 22.

<sup>46</sup> Quoted in Cusac, "Abu Ghraib, USA," 23-24.

<sup>47</sup> Shaylor and Davis, "Question of Control."

<sup>48</sup> Human Rights Watch, "Red Onion State Prison: Super-Maximum Security Confinement in Virginia" (April 1999), 15.

<sup>49</sup> Erving Goffman, "On the Characteristics of Total Institutions," in *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Garden City, NY: Anchor Books, 1961), 84.

<sup>50</sup> *Ibid.*, 84-85.

<sup>51</sup> Human Rights Watch, "Red Onion," 9. As most of the inmates in Red Onion are Black and most of the guards white, these rituals of humiliation often carry a racist overtone. One inmate told Human Rights Watch of his reception at the prison. On arrival, all new inmates were subject to a strip search. When he objected to the presence of female guards during his search, a supervisor shot him with a stun gun, and another screamed in his ear, "Boy, you're at Red Onion now," and then ordered a guard to "get that nigger out of here." Quoted in Human Rights Watch, "Red Onion," 21.

<sup>52</sup> Davis and Shaylor, "Question of Control."

<sup>53</sup> Shaylor, "Living in a Black Hole," 25.

<sup>54</sup> Quoted in *Ibid.*, 26-27.

<sup>55</sup> The UN Office of the High Commissioner for Human Rights's "Standard Minimum Rules for the Treatment of Prisoners" specify that "[w]omen prisoners shall be attended and supervised only by women officers."

<sup>56</sup> Human Rights Watch Women's Rights Project, *The Human Rights Watch Global Report on Women's Human Rights* (New York: Human Rights Watch, 1995), 160; and Shaylor, "Living in a Black Hole," 24.

<sup>57</sup> Quoted in Shaylor, "Living in a Black Hole," 25.

<sup>58</sup> *Ibid.*, 24. Police also sometimes conduct similar searches, to much the same effect. A 1992 lawsuit (*Timberlake v. Benton*) cited an incident in which two teenaged girls borrowed a relative's truck and were stopped by police. Neither girl was suspected of wrongdoing, but police thought

the vehicle's owner might be involved with the drug trade. A supervisor of the Drug Task Force ordered officers at the scene to conduct a body cavity search on both girls. The girls stripped and were ordered onto their hands and knees in the back of a patrol car, in plain sight of male officers. The supervisor then threatened future searches unless the girls provided information about the truck's owner. The girls sued, but courts declined to award punitive damages.

In another incident at around the same time, the police sought and received a warrant to search a woman's vagina for drugs. They forced her door open in the middle of the night, pulled her out of bed, handcuffed her, and drove her to the hospital, where a doctor conducted the search. No drugs were found. In the subsequent lawsuit (*Rodriguez v. Furtado*), the judge said he was "deeply troubled" by the search, but ruled against the plaintiff. Peter B. Kraska and Victor E. Kappeler, "Exploring Police Sexual Violence Against Women," in *Policing Perspectives: An Anthology*, ed. Larry K. Gaines and Gary Cordner (Los Angeles: Roxbury, 1999), 333.

<sup>59</sup> Quoted in Amnesty International, *Not Part of My Sentence*, 39.

<sup>60</sup> *Ibid.*, 38.

<sup>61</sup> Daniel Burton-Rose, "Our Sisters' Keepers," in *Prison Nation: The Warehousing of America's Poor*, ed. Tara Herivel and Paul Wright (New York: Routledge, 2003), 258–259.

<sup>62</sup> Christian Parenti, *Lockdown America: Police and Prisons in the Age of Crisis* (London: Verso, 1999), 190–191.

<sup>63</sup> Welch, *Punishment in America*, 203.

<sup>64</sup> Quoted in Amnesty International, *Not Part of My Sentence*, 47.

<sup>65</sup> Parenti, *Lockdown America*, 192.

<sup>66</sup> Angela Y. Davis writes: "Sexual abuse is surreptitiously incorporated into one of the most habitual aspects of women's imprisonment, the strip search. As activists and prisoners themselves have pointed out, the state itself is directly implicated in this routinization of sexual abuse, both in permitting such conditions that render women vulnerable to explicit sexual coercion carried out by guards and other prison staff and by incorporating into routine policy such practices as the strip search and the body cavity search." Angela Y. Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), 81.

<sup>67</sup> Parenti, *Lockdown America*, 188.

<sup>68</sup> Human Rights Watch, *No Escape: Male Rape in US Prisons* (New York: Human Rights Watch, 2001), 8.

<sup>69</sup> Stephen Donaldson, "A Million Jockers, Punks, and Queens," in *Prison Masculinities*, ed. Don Sabo, Terry A. Kupers, and Willie London (Philadelphia: Temple University Press, 2001), 118.

Donaldson, writing from firsthand experience, offers an excellent overview of the gender structure of male prisons. For instance: "In

ongoing sexual relationships, a Man is paired or 'hooked up' with a catcher; no other possibilities, such as a reciprocal gay pair, are tolerated. However, this one relationship is not only tolerated but sanctified by the prisoner subculture, and virtually all catchers are required to pair off for their own protection. ... These relationships are taken very seriously, as they involve an obligation on the part of the Daddy to defend his partner at the cost of his life if necessary and on the part of the catcher to obey his Man. ... Pair relationships are based on an adaptation of the heterosexual model, which the prisoners bring with them from the Street; the use of this model also validates the jail relationship while it confirms the sense of masculinity of the jocker and undermines that of the catcher." Ibid., 120–121.

<sup>70</sup> Angela Y. Davis and Cassandra Shaylor note: "Over 60 percent of female prisoners have been sexually or physically abused at some point in their lives. Prison sexual abuse repeats past trauma as it sexualizes punishment." Davis and Shaylor, "Question of Control."

<sup>71</sup> I draw this conclusion from my reading of the human rights literature, including countless statements from current and former inmates. Statistical evidence is in short supply and that which does exist is of questionable use. Any effort to quantify the occurrence of staff involvement will face two major difficulties. First, rape—inside prison and outside—remains one of the most underreported crimes in our society. Second, where prison staff is implicated in the abuse, inmates may reasonably feel that there is no one they *can* report it to.

The Bureau of Justice Statistics recently embarked on its first effort to measure the incidence of sexual abuse in prison. The resulting report "Sexual Violence Reported by Correctional Authorities" relied (as the title implies) on the reports of prison staff. Methodologically, this approach is almost guaranteed to radically underreport the actual occurred of sexual violence.

The report estimates 8,210 allegations of sexual violence—ranging from verbal harassment to rape—in 2004, which would translate to 3.15 allegations per 1,000 inmates. Of these, 42 percent of the allegations concerned staff misconduct (including *all* sexual contact), 37 percent nonconsensual sexual acts by inmates, 11 percent staff sexual harassment, and 10 percent other abusive conduct by inmates. Men made up 90 percent of both victims and perpetrators of inmate-inmate sexual violence, suggesting that female prisoners abuse each other rather rarely. Allen J. Beck and Timothy A. Hughes, "Sexual Violence Reported by Correctional Authorities, 2004" (US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, July 2005), 1, 5.

<sup>72</sup> Quoted in Human Rights Watch, *No Escape*, 106.

## CHAPTER 7

# THE CENTRALITY OF RAPE

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ON AUGUST 9, 1997, Abner Louima, a Haitian immigrant, was arrested outside a Brooklyn nightclub following an altercation between police and some number of the patrons there. Louima was not involved in the conflict, but police mistook him for another man who had been fighting. The officers who transported Louima to the precinct stopped twice *en route* and beat him. Later, inside the station house, Officer Justin Volpe removed Louima from his cell and led him to a bathroom. While another cop held Louima down, Volpe shoved a broken broom handle into his ass, and then into his mouth.

Louima was returned to the holding cell, until other inmates complained that he was bleeding. He was then moved to a hospital, where a nurse reported the abuse to Internal Affairs. Among Louima's injuries: a ruptured bladder, a torn colon, and broken teeth.<sup>1</sup>

The response of the authorities was surprisingly forceful. Volpe was arrested and charged with violating Louima's civil rights. Officer Charles Schwarz, who was accused of holding Louima down, was also arrested, as were Officers Thomas Wiese and Thomas Bruder, who were charged with obstructing justice. Volpe pled guilty and was sentenced to 30 years.<sup>2</sup>

This outcome was virtually unique among the many high-profile brutality cases under the watch of New York mayor Rudolph Giuliani, who was in office between 1994 and 2002. And it was clearly not the reaction Volpe expected. Volpe did nothing to hide his crimes from his colleagues. He marched Louima through the booking room, to and from the bathroom. He borrowed gloves from another officer before the assault, and he showed off the bloody, shit-smearred broom handle afterward, like a macabre trophy.<sup>3</sup>

It is worth considering the overall atmosphere of impunity that made such arrogance possible. It seems that Volpe expected to be fully protected by his peers. And while that didn't work out as he had hoped, it's not as though that expectation was altogether groundless. No police officer tried to stop the attack on Louima or moved to report it afterward. When the nurse did report it, Internal Affairs

investigators misfiled the report and failed to forward it to the district attorney's office (as required by department policy). Once an investigation was finally launched, a few officers came forward with what they knew; of these, at least one had to be transferred for his own protection. Meanwhile, 11 cops were cited for withholding information or lying to investigators.<sup>4</sup>

### SEXUALIZED ABUSE

I begin this chapter with a description of the abuse suffered by Abner Louima, in part because the case is well-known, but also because it is not usually discussed in terms of rape. Instead, it is often called "assault," "sodomy," and "torture." Given the facts, "rape" would seem to be the most obvious term. The International Criminal Court, which considers rape a crime against humanity, defines it according to these criteria:

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

[And,] 2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of genuine consent.<sup>5</sup>

Clearly, by this standard, Justin Volpe—with the aid of his colleagues, the protection of his immediate superiors, and in every sense that matters, under the color of law—raped Abner Louima.

Yet it does not get called that. Perhaps because the weapon, in this case, was a stick and not a penis. Or, perhaps, because the story—or more specifically, the victim and the rapist—do not fit our culture's stereotyped rape narrative. The idealized victim is a woman, usually a young woman, and necessarily a "good girl"—since sluts, it is suggested, are fair game and therefore cannot be raped. The rapist, of course, is a stranger, an outside force, a pervert and probably a psychopath. As has often been observed, these characters—the good girl and the stranger—carry racial connotations dating back to the white mythology of the slave era. The "good girl," almost by definition, is white and middle class; the "stranger" is a



Black man. There is no room in this scene for the victim to be a hard-working Black man, or for the rapist to be a white cop. So rape gets called something else, just as it does when the victim is a prostitute or other "fallen woman," just as it does when the rapist is a husband, boyfriend, or coworker—just as the brutality of Abu Ghraib gets called "abuse" and not "torture," because we all know that US soldiers don't engage in torture, and facts be damned.

But it was rape—what happened to Abner Louima—and it was torture, and using the words, especially together, may allow us to see similarities that might otherwise remain obscured.

Justin Volpe's attack on Abner Louima is particularly well-known, but it is, unfortunately, far from unique.<sup>6</sup> If we look back through the preceding chapters, we see a continuous theme of sexualized abuse, encompassing a startling range of practices: penetration of the genital and anal openings, using the perpetrators' bodies, sticks, bottles, truncheons, and (at Abu Ghraib) a chemical light; groping of the breasts, genitals, or buttocks; forced prostitution; coerced abortions; obscene gestures or sexually graphic remarks; mutilation of the genitals by crushing and electrocution; and rituals of humiliation involving strip searches and body cavity searches, prolonged nudity, pornographic poses and photography, and other violations of sexual taboos and gender norms. These practices occur in police stations, jails, prisons, and military bases, on public streets, and in "undisclosed locations." The victims include men, women, and children; suspects, convicts, political enemies, and people who are manifestly innocent of any offense. The perpetrators are cops, guards, soldiers, mercenaries, paramilitary troops, intelligence officers, secret police, and sometimes other inmates.

This catalog of atrocities is remarkable for its diversity, certainly, but more so for what its items have in common. Why should sexualized abuse feature so prominently in the stories of torture? Certain individual abuses may be explained in terms of opportunistic sadism, but the whole pattern of abuse cannot be dismissed so easily.

Part of the explanation is probably technical: An efficient and effective attack will focus on the victim's vulnerabilities. The genitals are an unusually sensitive part of the human anatomy, sex is an unusually sensitive area of human psychology; these then become rational targets for pressure.<sup>7</sup> But to understand the whole picture, we should consider the aims and purposes of torture as it is practiced, and we must view its specific techniques in terms of the larger social context of male dominance and cultural misogyny, as well as white supremacy and US imperialism.

### THE RAPE MODEL

Rape is, in the overwhelming majority of cases, an act of violence perpetrated by men against women. It may not be done to women exclusively, but it is uniquely characteristic of their oppression. This gendered aspect is, as we shall see, crucial to understanding how and why rape is used as a form of torture—but we should not allow it to obscure the continuity between rape per se and the litany of related abuses I've listed above. If we keep that concurrence in clear view, it becomes possible to see the centrality of rape to the conceptual universe of torture.

Rape is the epitome of sexual abuse. It is the standard against which other cases are measured; it is the extreme to which the other practices point. The idea of rape, its possibility, is implied—more or less clearly, with a greater or lesser immediacy—by each of the entire set of violations we've discussed in this context. The lesser abuses thereby borrow some of the force of the greater; in addition to their own violence, they also contain the threat of rape.

Consider, for instance, the use of prolonged nudity. Such a practice works against the victim on several levels. To be forcibly stripped naked is humiliating, to be put on display even more so. There is often a sense of shame attached to the unclothed body, and this shame can itself be exploited. Enforced nudity serves as a mark of general deprivation and can be physically uncomfortable (especially when it exposes the victim to the cold). It can undermine the victim's sense of identity and dehumanize her in the eyes of her captors. And also—to be held without clothes creates a sense of vulnerability, not only to the elements or to ridicule, but to physical attack.<sup>8</sup> The possibility of rape cannot drift far from one's mind.

We can press this analysis somewhat further. Rape is the model of sexual abuse, and sexual abuse, as we've seen, is a recurring motif in the practices of torture. But it is not only recurrent, it occupies a special place. Rape is not simply one technique among others, but an entire system of domination that can be mobilized and adapted to the tormentor's purposes.

Rape is a physical violation of the victim's person. It is also a psychological violation of her will, her autonomy. It denies, with special clarity, her right and her ability to say no, to refuse. It substitutes the will of the rapist for that of the victim.<sup>9</sup> Specifically, rape hijacks sex; it takes what may otherwise serve as a source of pleasure and turns it into a source of pain.<sup>10</sup> In all this, it is a perfect expression of torture's aims.

Kate Millett writes:

Torture is conquest through irresistible force. It is to destroy opposition through causing it to destroy itself: in despair, in self-hatred for its own vulnerability, impotence. It is to defile, degrade, overwhelm with shame, to ravage. In this it resembles rape.

And the tortured come to experience not only the condition of the animal caged by man, but the predicament of woman before man as well. A thing male prisoners discover, a thing female prisoners rediscover.

Torture is based upon traditional ideas of domination: patriarchal order and masculine rank. The sexual is invoked to emphasize the power of the tormentor, the vulnerability of the victim; sexuality itself is confined inside an ancient apprehension and repression: shame, sin, weakness.

The victim tortured sexually is tortured twice as it were, first by being deliberately harmed, second by being harmed in a way regarded as the most humiliating of all humiliations.<sup>11</sup>

Both torture and rape involve a type of intimacy that the aggressor alone controls. This intimacy manifests as physical contact that is repulsive to the victim and instrumental to the aggressor. But there is also a psychological incursion, almost an invasion. The torturer seeks to know his subject, to exploit her weaknesses, to break down her defenses. He plays on her sense of self, confronts her with her fears, toys with her desires, mobilizes her shame, preys upon her pride, manipulates her hopes—and turns all of these against her. The constitutive elements of the self become tools used against the whole, just as the pain of the body is used to gain access to the mind. The torturer, like the rapist, imposes rather than shares.

The destruction of dignity, the denial of respect, implicit in rape is acutely apparent to its victims. R. G., a prisoner in California, told Human Rights Watch, "It is truly impossible to put into words what goes through one's mind when becoming a victim of rape. Being made into a person of no self-worth, [being] remade into what ever [sic] the person or gang doing the raping wants you to be."<sup>12</sup>

By using rape, torturers also avail themselves of secondary features of the rape taboo, especially the stigma that so often attaches to the victim. (Recall, for example, the insistent silence of the women held at Abu Ghraib when they were asked about rape and sexual assault.) The UN special rapporteur on torture explains:

In addition to being an especially traumatic form of torture for the victim, rape may have insidious correlative consequences. In many situations a woman may be

reluctant to seek redress by reporting a rape because of the severe social repercussions that may follow therefrom. The stigma attached in many communities to a woman who has been raped results in particularly dire consequences for the private and public life of the woman. ... Consequently, when rape or sexual assault against a woman constitutes a torture method, the chances of the torturer acting with impunity would appear disproportionately higher than with other torture methods.<sup>13</sup>

The technicians in the gulags do not need to invent or improvise when they use rape as a means of torture. They find it ready-made in the larger culture, among the tools of male dominance—a weapon for terrorizing a subordinated class. Rape is not a separate issue, or simply one device among many in the torturer's tool chest. Rape is, instead, the model around which torture is organized.

#### THE SEXUAL POLITICS OF TORTURE

I am not suggesting that state-sponsored torture exists just because rape exists. Rather, I am arguing that rape provides the blueprint for the form that torture takes under our current social order, that rape presents an ideal image of the way torture operates—physically, psychologically, and politically.

In her book *Sexual Politics*, Kate Millett describes the division of humanity into two hierarchically arranged genders characterized by distinctions of temperament, role, and status.

The first item, temperament, involves the formation of human personality along stereotyped lines of sex category ("masculine" and "feminine"), based on the needs and values of the dominant group and dictated by what its members cherish in themselves and find convenient in subordinates: aggression, intelligence, force, and efficacy in the male; passivity, ignorance, docility, "virtue," and ineffectuality in the female. This is complemented by a second factor, sex role. ...

The limited role allotted the female tends to arrest her at the level of biological experience. Therefore, nearly all that can be described as distinctly human rather than animal activity ... is largely reserved for the male.

Of course, status again follows from such an assignment. ... Those awarded higher status tend to adopt roles of mastery, largely because they are first encouraged to develop temperaments of dominance.<sup>14</sup>

However much has changed—politically and theoretically—since *Sexual Politics* first appeared, the dichotomy Millett articulates still holds much of its force. Yet the positions she describes do not represent the two exclusive halves of a sexual dyad so much as they resemble the idealized endpoints of a broad spectrum. This gender spectrum covers the range between the two poles of “hegemonic masculinity” and “emphasized femininity,” ordering subordinate roles and identities within a complex hierarchy.<sup>15</sup>

R. W. Connell explains how this gender system orders male relationships:

Oppression positions homosexual masculinities at the bottom of a gender hierarchy among men. Gayness, in patriarchal ideology, is the repository of whatever is symbolically expelled from hegemonic masculinity, the items ranging from fastidious taste in home decoration to receptive anal pleasure. Hence, from the point of view of hegemonic masculinity, gayness is easily assimilated to femininity. And hence—in the view of some gay theorists—the ferocity of homophobic attacks.

Gay masculinity is the most conspicuous, but it is not the only subordinated masculinity. Some heterosexual men and boys too are expelled from the circle of legitimacy. The process is marked by a rich vocabulary of abuse: wimp, milksop, nerd, turkey, sissy, lily liver, jellyfish, yellowbelly, candy ass, ladyfinger, pushover, cookie pusher, cream puff, motherfucker, pantywaist, mother's boy, four-eyes, ear-'ole, dweeb, geek, Milquetoast, Cedric, and so on. Here too the symbolic blurring with femininity is obvious.<sup>16</sup>

We have seen something of this system in our discussion of men's prisons, where a multiplicity of ranked gender roles replicate sexist and heterosexist views of dominance and submission.<sup>17</sup> A system of tiered relationships is thus established and maintained among the inmates, largely through violence (especially rape); this system is at once political and economic and is used in turn by administrators and guards to reward their inmate enforcers and punish troublemakers.<sup>18</sup>

We can see a similar dynamic, manifested quite differently, by turning our thoughts back to the photographs from Abu Ghraib.



**FEMALE TORMENTORS, MALE POWER**

The pictures from Abu Ghraib show smiling American women holding prisoners on leashes, posing with piles of nude, hooded figures, mocking and pointing at the genitals of stripped, helpless men. All this received a great deal of comment in the US press when the photos were released.<sup>19</sup> To some it was seen as an additional shock that women (presumably, the gentler sex) should be engaged in such appalling behavior.<sup>20</sup> Others explained that women were useful in the interrogation of Iraqi men because Arab culture deemed it particularly shameful for men to submit to women.<sup>21</sup>

The implied criticism of Arab sexism need not detain us long: American condemnation of Muslim patriarchy is often nothing more than bald hypocrisy. Here it serves as a politically useful diversion as well. It encourages us to understand the photos in terms of "their" sexism, and deflects attention away from ours.<sup>22</sup>

It would be wrong to suggest that the role reversal evident in those images somehow represents a blow against male supremacy,<sup>23</sup> or that the humiliation it creates is alien to American culture. Similar tactics are employed in the United States: female interrogators mock suspects in police investigations; female observers add to the embarrassment and shame of men during strip searches; and the gendered language of the prison—"punk," "queen," "bitch," "fish"—signifies both a subordinate class of feminized men and a concomitant misogyny in the surrounding culture.

In these cases, some part of the humiliation the victims feel is surely bound up with their own misogynist and homophobic outlooks. (Dhia al-Shweiri, a former prisoner at Abu Ghraib, remarked, "They wanted us to feel as though we were women, the way women feel, and this is the worst insult, to feel like a woman."<sup>24</sup>) However, there is another element that we would do well to remember. In a society dominated by men, there is good reason to fear being treated like a woman. To be feminized, to be emasculated, is to be put in a subordinate position. It is to be labeled a candidate for abuse. It may be a humiliation; it is definitely a threat.<sup>25</sup>

This revocation of male privilege can be effectively communicated by the presence of female tormentors. Even so, perhaps no perfect "role reversal" is possible. Think of how the presence of female guards as men are strip-searched differs from the presence of male guards as women are. In both cases, shame and embarrassment may be acute; in the latter case, fear—specifically, the fear of rape—is likely to be as well.<sup>26</sup> And note that in both cases the ex-

pression of power, the form of the abuse, remains characteristically sexist, not feminist.

So what can be said of the women who participate in it? Perhaps that they share in the power without changing its character. Perhaps that they are the instruments of power, but not its authors.<sup>27</sup> It is important to remember that the women who engage in torture are not simply women, but also police officers, prison guards, or soldiers. They are the servants of the state and the agents of the empire. Like Black cops who, whatever their intentions, work so well to maintain white supremacy, these women operate within and ultimately defend a system based to a very large degree on their own oppression. They may act, for a time and by virtue of their uniform, as the state's representatives. But they are not the masters of the power they wield. This power does not belong to them; they, rather, belong to it.<sup>28</sup> The institutions of which they are a part exploit this dual identity and use it, in the sort of cases we're discussing, not to subvert the gendered hierarchy but to press select men into a lower stratum—and to communicate just such a change in status.

In the vernacular of the men's prison, to "make a woman out of someone" is to rape them.<sup>29</sup> It is interesting to compare this turn of phrase with that achievement so often credited to the military, that it can "make a man out of you"—meaning, turn you into an obedient killer. Whatever the actual sex of either person, the gendered relationship between victim and torturer reflects this same sort of sexist thinking.

Torture mobilizes this familiar system of status—in a sense, it strips it down to its most basic form. Torture imposes on the victim a sense of helplessness and inferiority. It seeks to render him passive, docile, ignorant, ineffectual—thus moving him toward the "feminine."<sup>30</sup> Torture has its effect by reducing the victim to his body, his biology, his animal needs—hence, not only the comparisons to sexist domination, but the similarity to slavery as well.

In this sense, Sartre may have identified the core of the issue, the struggle between domination and dignity, and the misapprehension that they come to the same thing—in short, the conflation of "manhood" with humanity. He wrote: "The torturer puts himself against the tortured for his 'manhood' and the duel is fought as if it were not possible for both sides to belong to the human race."<sup>31</sup>

## TORTURE AND RAPE

I've argued that rape is an especially important aspect of state-sponsored torture. It is used to degrade its victims, to convey disrespect, and to shame them into silence. It is used to reward torturers, to reinforce their sense of power, status, and identity, and to structure the institutions of which they are a part. These features make rape particularly useful among the practices of torture.

But let's remember, also, that these very same features make rape a form of torture in itself. Rape is torture—whether perpetrated by a soldier, or a cop, or a husband, or a father, or a stranger, or a “friend.” And our understanding of the rape model must also consider it from this direction: “In feminist analysis, a rape is not an isolated event or moral transgression or individual interchange gone wrong but *an act of terrorism and torture within a systematic context of group subjection*, like lynching.”<sup>32</sup> Rape is used as much to discipline “good girls” as to punish “bad.” Its threat circumscribes the lives of women and shapes their choices in innumerable ways, sometimes subtly, sometimes explicitly: choices about travel, housing, work, manner of speech, style of dress, socializing, sexuality, and in short, the entire arena of daily life.

So, in the context of state-sponsored torture—the subject of the present study—rape is a technique, perhaps the ideal technique of coercion. But in the context of male supremacy overall, rape is itself a *system* of terrorism and torture. State-sponsored torture both uses rape as a technique and mirrors its overall terrorist strategy.

## NOTES

<sup>1</sup> Marilyn Johnson, *Street Justice: A History of Police Violence in New York City* (Boston: Beacon Press, 2003), 294; and Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States* (New York: Human Rights Watch, 1998), 286–287.

<sup>2</sup> Schwarz, Wiese, and Bruder were also convicted, but their convictions were overturned on appeal. Schwarz was then retried and convicted of perjury. Johnson, *Street Justice*, 296.

<sup>3</sup> Human Rights Watch, *Shielded From Justice*, 286.

<sup>4</sup> *Ibid.*, 287.

<sup>5</sup> Quoted in Amnesty International, *Combating Torture: A Manual for Action* (London: Amnesty International, 2003), 75. To fall under ICC jurisdiction the crime must occur as part of an attack against a civilian population, and the perpetrator must be aware of this context. For an overview of the international jurisprudence, see Cherie Booth, “Sexual Violence, Torture, and International Justice,” in *Torture: Does It Make Us Safer?*

*Is It Ever OK? A Human Rights Perspective*, ed. Kenneth Roth and Minky Worden (New York: New Press, 2005).

- <sup>6</sup> A prisoner in Starke, Florida, wrote to the American Friends Service Committee about an incident he witnessed: "We other prisoners watched one of the captains hold up the prisoner, who was ... handcuff[ed] behind his back and in leg shackles, while his subordinates took turns beating him. It looked like they were killing him. One of the guards took a broom and forced it into the prisoner's rectum and then down his throat. The last we saw they were taking him to the hospital." *Torture in US Prisons: Evidence of US Human Rights Violations*, ed. Julia Lutsky (Newark, NJ: American Friends Service Committee, New York Metropolitan Region, Criminal Justice Program, 2000), 5.
- <sup>7</sup> Douglas Shenson, the director of the Human Rights Clinic at Montefiore Hospital and North Central Bronx Hospital, confirms that electrical torture "is often [intended] to inflict maximal pain. The electrodes are often applied to the most sensitive parts of the body. That includes the genitals." Quoted in Anne-Marie Cusac, "Stunning Technology: Corrections Cowboys Get a Charge Out of Their New Sci-Fi Weaponry," *Progressive*, July 1996, 22.
- <sup>8</sup> For a more complete discussion of the psychological and medical consequences of sexual humiliation, see Physicians for Human Rights, "Break Them Down: Systematic Use of Psychological Torture by US Forces" (2005), [www.phrusa.org](http://www.phrusa.org) (accessed December 20, 2005), 55–59. Forced nudity is specifically discussed on pages 11 and 59.
- <sup>9</sup> "Looked at microscopically, an individual rape ... is a use of a person, not just the injury of a person, and a use of a person in pursuit of ends not its own and/or contrary to its own. That is profoundly disrespectful and a clear case of failing to treat a person as a person. It is also a use of a person which involves tampering with parts of its self which are for most people centrally rather than peripherally involved in their personal identity. Looked at macroscopically, rape is the point of application of a monstrous device of social control." Carolyn M. Shafer and Marilyn Frye, "Rape and Respect," in *Feminism and Philosophy*, ed. Mary Vetterling-Braggin, Frederick A. Elliston, and Jane English (Totowa, NJ: Rowman and Littlefield, 1981), 345.
- <sup>10</sup> This inversion may also be seen as a further application of one means of torture. "Each source of strength and delight ... becomes a means of turning the body back in on itself, forcing the body to feed on the body: the eyes are only access points for scorching light, the ears for brutal noises; eating ... is replaced by rituals of starvation involving either no food or food that nauseates; taste and smell ... are systematically abused with burns and cuts to the inside of nose and mouth, and with bug-infested or putrefying substances; normal needs like excretion and

special wants like sexuality are made ongoing sources of outrage and repulsion." Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985), 48.

<sup>11</sup> Kate Millett, *The Politics of Cruelty: An Essay on the Literature of Political Imprisonment* (New York: W. W. Norton), 34–35. Paragraph breaks added.

<sup>12</sup> Quoted in Human Rights Watch, *No Escape: Male Rape in US Prisons* (New York: Human Rights Watch, April 2001), 39.

<sup>13</sup> Quoted in Amnesty International, *Combating Torture*, 13.

<sup>14</sup> Kate Millett, *Sexual Politics* (Garden City, NY: Doubleday, 1970), 26. Paragraph breaks added.

<sup>15</sup> R. W. Connell, *Gender and Power: Society, the Person, and Sexual Politics* (Stanford, CA: Stanford University Press, 1987), 183.

<sup>16</sup> R. W. Connell, *Masculinities* (Berkeley: University of California Press, 1995), 78–79.

<sup>17</sup> Helen Eigenberg remarks: "Stereotypes and conventional wisdom dictate that rape victims are effeminate—not hypermasculine or muscular. Victimization data also indicate that individuals with feminine traits are frequently viewed as high-risk targets for victimization. ... In fact, it would be remarkable if male rape victims were not viewed as emasculated, because in our culture the very definition of masculinity does not allow for men to be raped. Although researchers traditionally concentrated on the homosexual nature of male rape in prison, more recent research has focused on rape in prison as an expression of power and control. ... However, this literature generally ignores gender in a more complex theoretical manner. In other words, it disregards the ways in which rape is associated with traditional definitions of masculinity and femininity. As a result, the literature fails to fully extrapolate why it is essential to portray male rape victims as weak, homosexual, and effeminate. Men are those individuals who possess and manipulate power and control, especially as it relates to the use of sexual aggression, and women are generally the recipients of this violence. The very thing that separates rape victims from perpetrators in the larger culture is gender. Hence, men who are raped in prison take on the status of women. They are weak and effeminate, then, by definition." Helen M. Eigenberg, "Prison Staff and Male Rape," in *Prison Sex: Practice and Policy*, ed. Christopher Hensley (Boulder, CO: Lynne Rienner, 2002).

<sup>18</sup> For more on the plurality of masculinities in prison, see Stephen Donaldson, "A Million Jockers, Punks, and Queens," in *Prison Masculinities*, ed. Don Sabo, Terry A. Kupers, and Willie London (Philadelphia: Temple University Press, 2001); and Tammy Castle, Christopher Hensley, and Richard Tewksbury, "Argot Roles and Prison Sexual Hierarchy," in Hensley, *Prison Sex*.



- <sup>19</sup> The presence of women in the photos was very much remarked upon. But we should remember, as Physicians for Human Rights reminds us, "While female interrogators have been implicated in the sexual humiliation from both Abu Ghraib and Guantanamo, the majority of the incidents revealed to date involve the sexual humiliation of male detainees by male interrogators." Physicians for Human Rights, "Break Them Down," 57.
- <sup>20</sup> One female veteran wrote, "I have to say that like almost everyone else, I was shocked. I somehow thought that women couldn't, or at least wouldn't, act with such disregard for humanity." M. S. Embser-Herbert, "When Women Abuse Power, Too," *Washington Post*, May 16, 2004.
- <sup>21</sup> Similar reasoning was employed in Afghanistan. Chris Mackey states matter-of-factly that "I selected Pearson [to assist with the processing of new prisoners] because I knew the presence of a woman would be unsettling for Muslim prisoners, especially as they were being strip-searched." Chris Mackey and Greg Miller, *The Interrogators: Inside the Secret War Against Al-Qaeda* (New York: Little, Brown and Company, 2004), 259.

Likewise, a soldier stationed at Guantánamo Bay said that she was instructed to watch a prisoner shower because "he'll feel more humiliated if there's a female present." Quoted in Amnesty International, "United States of America: Human Dignity Denied; Torture and Accountability in the 'War on Terror'" (October 27, 2004).

- <sup>22</sup> For a thorough discussion, see Jasbir K. Puar, "Abu Ghraib: Arguing Against Exceptionalism," *Feminist Studies* 30, no. 2 (Summer 2004).
- <sup>23</sup> It has been suggested that the motivation behind the abuse at Abu Ghraib may have been partly "feminist"—an act of resistance against male supremacy, or at least the manifestation of a female revenge fantasy. Stephanie Guttman writes: "I think that they [female soldiers] have been aware of the Islamic attitude about women—which is not respectful. They may have subtly enjoyed being sadistic to the kind of men who enjoyed humiliating other women." Quoted in Brooke Walker, "Abu Ghraib and a New Generation of Soldiers," in *Abu Ghraib: The Politics of Torture* (Berkeley, CA: North Atlantic Books, 2004), 75.
- <sup>24</sup> Quoted in Puar, "Abu Ghraib," 530.
- <sup>25</sup> Consider: "Domestic violence is the leading cause of injury to women in the nation. Between one-third and one-half of all women are assaulted by a spouse or partner at some point during their lives. ... Every six minutes, a woman in the United States is raped; every eighteen seconds a woman is beaten, and every day four women are killed by their attackers." Michael S. Kimmel, *The Gendered Society* (New York: Oxford University Press, 2000), 254.

- <sup>26</sup> The courts have acknowledged, and perhaps exaggerated, this asymmetry. They have repeatedly ruled that it violates the rights of female prisoners for male guards to watch them shower and dress (e.g., *Lee v. Downs*, *Forts v. Ward*, and *Dawson v. Kendrick*). And the *Jordan v. Gardner* ruling determined that it constitutes cruel and unusual punishment for male guards to frisk female inmates.

But in *Grummet v. Rushen*, the courts rejected a parallel complaint by male prisoners against female guards touching their groins during searches. And in *Somers v. Thurman*, the courts rejected Keith Somers's complaint that female guards regularly conducted strip searches, monitored showers, and mocked him. The court cited "differences between men and women" and concluded that "to hold that gawking, pointing, and joking violates the prohibition against cruel and unusual punishment would trivialize the objective component of the Eighth Amendment test and render it absurd." Quoted in Nancy Levit, "Male Prisoners: Privacy, Suffering, and the Legal Construction of Masculinity," in Sabo et al., *Prison Masculinities*, 97.

Of course, given the actual treatment of female prisoners, the courts' view on their rights seems to make little real difference, one way or the other.

- <sup>27</sup> Lynndie England's statements to interviewers suggest that she was little more than a prop in scenes scripted by her male friends. She told *Dateline's* Stone Phillips, "Graner had put them in a pyramid position. We didn't know exactly what he was doing at first. He just started bringing them over and piling 'em up. He said, 'Well I'm gonna put 'em in a pyramid' and he said it was for 'controlling purposes.' ... [He] said, 'come on I want to have a picture with you.' ... I don't know why he wanted a picture like that. I mean who would?"

"[Phillips:] I mean, it looks like something that was done for amusement.

[England:] Maybe for him.

[Phillips:] Smiles, on both your faces—and you are smiling as well, Lynndie.

[England:] Yes, I am, I admit it. But I just, I guess I followed his lead.

[Phillips:] I mean he couldn't order you to do anything could he?

[England:] No, not really, but I was so in love with him that I trusted his decisions and did whatever he wanted."

Quoted in Stone Phillips, "Behind the Abu Ghraib Photos," *Dateline NBC*, October 2, 2005, <http://msnbc.msn.com/id/95326701> (accessed November 15, 2005).

- <sup>28</sup> The same may also be said of male soldiers, though they are situated differently by virtue of their gender. They, too, become the means for

others' ends, though the state's use of them and their experience may be quite removed from that of their female comrades.

<sup>29</sup> Quoted in Don Sabo, "Doing Time, Doing Masculinity: Sports and Prison," in Sabo et al., *Prison Masculinities*, 64.

<sup>30</sup> This is no less true when the victim is female. The vast majority of women are *not* weak or imbecilic; it takes work to subordinate them to men. But this work is generally begun much earlier and mostly takes place outside the prison cell—in the home, the classroom, the street, the workplace. Again, men "discover" in the torture chamber what women have been forcibly taught elsewhere.

<sup>31</sup> Jean-Paul Sartre, introduction to *The Question*, by Henri Alleg (New York: George Braziller, Inc., 1958), 30.

<sup>32</sup> Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), 172. Emphasis added.

Comparisons between rape and lynching commonly appear in certain feminist accounts and are sometimes misused to weirdly *equate* racism and sexism. While comparisons are apt, since both lynching and rape can have the appearance of spontaneous violence while in fact participating in and contributing to (and to some degree, typifying) a much broader system of oppression, we must still be careful not to make too much of such analogies. Rape is not "just like" lynching; sexism is not "just like" racism. Connected though they may be, oppressions are never perfectly commensurable and it is important to recognize the differences as well as the parallels.

The best discussions avoid mistaken equivalencies, but do consider the relationships between the two modes of oppression. For instance, Angela Davis writes: "Lynching ... complemented by the systematic rape of black women, became an essential ingredient of a strategy of terror that guaranteed the over-exploitation of black labor and, after the dismantling of gains made during the reconstruction, the political domination of black people as a whole." Angela Y. Davis, "Rape, Racism, and the Capitalist Setting," in *The Angela Y. Davis Reader*, ed. Joy James (Malden, MA: Blackwell Publishers, 1998), 133.

For a detailed historical treatment of the interrelation between rape and lynching, see Jacquelyn Dowd Hall, "'The Mind That Burns in Each Body': Women, Rape, and Racial Violence," in *The Powers of Desire: The Politics of Sexuality*, ed. Ann Snitow, Christine Stansell, and Sharon Thompson (New York: Monthly Review Press, 1983).

## CONCLUSION

# TORTURE, TERROR, AND THE STATE

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SO FAR, THROUGHOUT THIS book, I've described torture as it is practiced by our military and police, by our government's allies overseas, and in prisons, jails, and detention facilities both in the US and abroad. I've shown how it is supported by our government's policies, promoted in its training programs, and funded with its dollars. I've also argued that torture reflects core aspects of the institutions that employ it and takes a form closely modeled on the practices of rape.

But, why? What is the point of all this cruelty and suffering? What purpose is served by such pain and humiliation? I've spoken freely about "the aims of torture" and "the objectives of the tormentors"—but what are they?

Let's start with what torture is *not* for.

### WHAT TORTURE IS NOT FOR

Torture is of little use for intelligence gathering. It may produce information, but that information is prone to be extremely unreliable, since many people will say literally anything to end their own unbearable suffering. As one US Army Field Manual states, "Use of torture and other illegal methods is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear."<sup>1</sup> Pain is a very powerful motivator, but it may be *too* powerful. It gives its victim an incentive to offer false information, if that is what it takes to satisfy his tormentors. Torture, on the whole, is thus more likely to produce bad information than are noncoercive techniques. Moreover, pain, stress, and fatigue can impair the function of the memory, blurring important details and distorting facts even once the prisoner begins to cooperate.<sup>2</sup>

In part because of these problems, torture is corrosive to the stated aims of legal justice. As I discussed in previous chapters, it has been shown to produce false confessions, leading the wrong people to be punished, the true perpetrators to walk free, and the

public at large to have doubts about even legitimate convictions. In Chicago, for example, we know of cases where innocent people were tortured, confessed, and went to prison for things they did not do; the corollary is that the people guilty of these crimes went free. In other cases, it is likely that *guilty* people were tortured, confessed, and had their cases thrown out because the use of coercion during questioning so severely corrupted the investigation. The bad process, often as not, produces bad results. Furthermore, a reliance on torture can degrade an organization's other skills, making the agency less adept at actual detective work.<sup>3</sup>

These difficulties have been well understood since antiquity. Aristotle wrote:

Torture is a kind of evidence, which appears trustworthy, because a sort of compulsion is attached to it. ... [But] those under compulsion are as likely to give false evidence as true, some being ready to endure everything rather than tell the truth, while others are really ready to make false charges against others, in the hope of being sooner released from torture.<sup>4</sup>

Still, former US Military Intelligence officer Chris Mackey reasons,

If a prisoner will say anything to stop the pain, my guess is he will start with the truth. Our experience in Afghanistan showed that the harsher the methods we used ... the better the information we got and the sooner we got it.<sup>5</sup>

Mackey's hypothesis presumes that the information is there to be gotten—that is, that the prisoner knows the answers to the questions he is being asked. It also assumes that the interrogator can tell the difference between genuine and affected ignorance. If you torture someone severely enough, she will talk. If she has the information you're seeking, she may give it to you. But if she doesn't have the information, she will likely fabricate answers until you are satisfied. And either way, the subject is likely to begin by declaring her innocence, insisting that she knows nothing. From the perspective of the interrogator, there is often no way to distinguish the one case from the other.<sup>6</sup> This unavoidable similarity undermines the utility of torture as a means of collecting information.

It also thereby undermines utilitarian justifications for torture. While no one thinks that a method must be infallible to be worthwhile, the threshold to justify the use of torture in a particular case must be very high—and the reliability of the information to be



gained must be a factor there. Moreover, the justification in the particular case is insufficient to establish torture as a generally acceptable practice. And worse still—the larger the number of particular cases, the less reliable the overall information retrieved. In other words, the more torture is used the less we can trust its results. If we evaluate its effectiveness (and thus, one aspect of its justification) not in terms of individual cases but as an overall approach to collecting information, it is clear that the costs are too high.

And then there are the cases where the truth is not even at issue—where there is no information to be gained, no questions to be answered. While apologists for torture generally base their justifications on the importance of the intelligence and the recalcitrance of hardened killers, this is in fact only one type of scenario in which torture comes into play. More commonly, there is no ticking time bomb, no crime to be solved, no interrogation to lend the ordeal even the veil of legitimacy.<sup>7</sup> Abner Louima was not being *interrogated* in that filthy station house rest room. A substantial portion of the prisoners in Abu Ghraib and Guantánamo were known to be harmless. The inmates in American prisons have *already* undergone investigation, trial, and conviction; there is no further need for questioning or proofs.

What can we say of these cases? Are they aberrations? Unfortunate errors? Individual crimes? How then do we account for the prevalence of such cases, and for their systematic nature? Perhaps torture serves here, formally or informally, as punishment. But how do we explain the punishment of the innocent?

It becomes tempting to write the whole thing off as excess, as foolishness. And that is certainly a factor. But there is also a strategy in play, a logic that becomes evident when we move beyond the particular cases and consider the aggregate role of torture as a system, when we move away from an evaluation of its efficacy for the ends suggested by its advocates, and examine instead its actual social product. The product of torture is not truth, but terror. Its strategy is not that of objective investigation, but of political intimidation.<sup>8</sup>

## THE USES OF PAIN

What torture is good for is coercion. For this reason, William Blackstone characterized torture, in his famous *Commentaries on the Laws of England*, as “an engine of the state, not of law.”<sup>9</sup> Pain can bring compliance, but it cannot bring justice. It is, rather, destructive of the prerequisites of justice, in either the legal or the ethical

sense. Torture negates the autonomous will of the individual, the universal respect due to persons, standards of rationality and impartiality, and ultimately, the rule of law. If we do away with all of these, we are left with only the cruel calculus of naked power. Our rights gone, we stand without dignity before the Leviathan of the state. This is the ideology of torture, its self-fulfilling dream.

Torture can destroy the individual's will to resist. By threatening to torture a third party (a child, for example), one might command obedience from even the most unwilling subject. Moreover, when torture—or the fear of torture—becomes common enough, it can be used to control people who never experience it directly. By torturing select individuals, one can terrorize whole communities, even entire populations.

We can see this in the Humboldt County cases, where sheriff's deputies wiped concentrated pepper-spray fluid directly in the eyes of nonviolent protesters. The official rationale was that a little pain would convince the protesters to unlock their arms and surrender for arrest. But it also sent a message to others who might consider further actions in the future: *This* is how we respond to disobedience in Humboldt County, *this* is the price of resistance. Similar messages were sent by the humiliations in Iraq, the death squads in El Salvador, mass detentions in Palestine, the 81 Shakedown in Hawai'i's prisons, and similar occurrences around the world.

This analysis can also help explain the choice of victims. In one survey of American prisoners, researchers found that a substantial portion of those receiving severe discipline were described as inmates "with principles or intelligence," "those with dignity and self-respect," "authors of truthful articles," and so on. The researchers concluded:

These data suggest that those maximum security prisoners who respond to their environment based on internal criteria and/or file grievances, lawsuits, or think for themselves, or are different, are singled out for harassment, abuse and punishment.<sup>10</sup>

In *Discipline and Punish*, Foucault assumes that for torture to produce terror, it must be presented to the public in the form of a grand spectacle.<sup>11</sup> But in its modern form, torture is not typically spectacular; it is hidden. Its use is not openly threatened, it is denied. And yet it has its effect. Stories of torture emerge as occasional scandals. Or, more commonly, they circulate in the form of rumor and conjecture—no less terrifying for being unverifiable. They reach the ears and ferment in the imaginations of those who might

oppose the state. The same channels that communicate dissent also relay the threat of unbearable suffering.

In early modern Europe, the power of the sovereign was dramatized on the scaffold. Foucault assumes that to translate individual suffering to public terror, the mechanisms of power must be on display—highly visible and widely known. Foucault seems to forget the suffocating atmosphere of societies where people simply disappear.

At the same time, there are also those who remain faithful to the system—those who simply refuse to believe the reports of abuse (if indeed they ever hear them at all). Their faith protects them from the knowledge of atrocity, and from the fear it inspires. But such ignorance is also a kind of privilege. It is, in Joseph Conrad's evocative phrase, a "great and saving illusion" that at once sustains the sovereign's claim of legitimacy and preserves the loyalty of its chosen subjects—those far removed from the suffering it creates.<sup>12</sup> Privilege is justified, in the eyes of those who enjoy it, largely because its costs are concealed; they are protected from the knowledge of what is done in their name.

For the unprotected, though, fear can be more powerful than pain. A 1963 CIA interrogation manual notes:

The threat of coercion usually weakens or destroys resistance more effectively than coercion itself. ... The threat to inflict pain, for example, can trigger fears more damaging than the immediate sensation of pain. ... Sustained long enough, a strong fear of anything vague or unknown induces regression, whereas materialization of the fear, the infliction of some form of punishment, is likely to come as a relief. The subject finds that he can hold out, and his resistance is strengthened.<sup>13</sup>

This insight offers some hint as to how torture used against the few can terrorize the many—perhaps especially where secrecy keeps the details "vague or unknown."

Even when used in interrogation, the presumed ends of torture are very different than the real ends. In his study of torture in modern Iran, Darius Rejali catalogs some of torture's many uses. Suspects were coerced to admit to minor crimes for the sake of justifying future surveillance and detention. Dissidents were forcefully converted into informers, creating an atmosphere of distrust within and between opposition groups. Opponents of the government were forced to appear on national television and recant their views, or to condemn the activities of rival factions. And torture

was used to psychologically alienate the prisoner from his own body and biography, and ultimately, his sense of identity.<sup>14</sup>

In these cases, it is not the *information* that is important, so much as the power of making the victim talk. It is not the sincerity of a dissident's renunciation of Marxism, or his denunciation of his comrades, but the fact that the regime can make him do these things.<sup>15</sup>

Philosopher Henry Shue explains that "when the torturers succeed in torturing someone genuinely committed to the other side, compliance means, in a word, betrayal: betrayal of one's ideals and one's comrades."<sup>16</sup> He identifies this explicitly as an attack on the victim's integrity.<sup>17</sup> Sartre argues along the same lines:

The purpose of torture is not only to make a person talk, but to make him betray others. The victim must turn himself by his screams and by his submission into a lower animal, in the eyes of all and in his own eyes. His betrayals must destroy him and take away his human dignity.<sup>18</sup>

In this sense, the significance of torture lies in its demonstration of the regime's power, not only to destroy the individual, but to dissolve solidarity, to violate his allegiances, to cause him to deny his convictions, to surrender his secrets, and in some cases, to subvert all sense of identity, reality, meaning, and truth.

#### THE VICTIM CLASS

Two further questions arise: Whose interests does torture serve? And, whose body becomes the terrain for this struggle?

Each of these questions will be answered according to the overall distribution of power within the society. Though the state does have its own aims and serves its own interests, it neither identifies nor pursues them with complete autonomy. It is constrained in its means and directed to its ends by broader social forces.

Those who hold power will be served by power; those who lack it, suffer under it. The victims of torture are designated, in one sense, in advance: they are not necessarily those who oppose the government, its policies, its functionaries, or the corporations it so often protects; the victims are, instead, those people whose *interests* lie in opposition to the interests of the elite, those who are in the way of the capitalists' profits, who threaten the plans of the imperialists.

We may speak in terms of a permanent victim class, the largest portion of which are the poor, people of color, and those peoples

unlucky enough to inhabit countries where the US feels it has a political, economic, or military interest. In our society as it is—stratified by race and class, dominated by large companies, ruled by the state—it may sometimes be hard to predict who, individually, will be subject to torture, but it is only too easy to see where, among the population, the victims will be found.

#### **TORTURE AS INSTRUMENT, EXPRESSION, AND OBJECT OF POWER**

Far from being random, isolated occurrences, or deviations from policy, torture is systematic and directed. It is calculated to terrorize particular groups of people and designed to maintain social control. Pain and humiliation, along with surveillance, confinement, and the more basic use of violence, are therefore major elements of state power.

There are three dimensions to the nexus of torture and state power. First, there is the instrumental aspect. States use torture for specific identifiable ends, whether to coerce individual people or to intimidate subject populations. Second, torture serves as an expression of status. It represents the power of the state, making it manifest on the body of its victims. It also communicates the elevated status of the torturer and the degraded position of his prisoner. This dramatic aspect is especially clear in the rituals of humiliation. What purpose is served by causing a prisoner to urinate on herself, or forcing a man to masturbate, besides that of illustrating the powerlessness of the vanquished?<sup>19</sup>

Third, and perhaps most troubling, torture can arise as a function of the position of power itself—not in response to opposition, but as an exultant tribute to the state's own ascendancy. It is the nature of power to expand, to search out its limits. Graphic abuses become a predicable consequence of unchecked power, especially within institutions that are by their very nature coercive, or in settings that are already degrading to those who endure them. Invading armies, zero-tolerance police campaigns, supermax prisons, and extrajudicial concentration camps become, unless extraordinary measures are taken to insure otherwise, sublime machines for generating atrocities. It follows from the logic of domination, the psychology of pure power.<sup>20</sup>

As George Orwell put it, "The object of persecution is persecution. The object of torture is torture. The object of power is power."<sup>21</sup>



## THE LIMITS OF TORTURE

There is a certain resonance between the practices of torture and the global ambitions of the United States. The ideal of the empire is unassailable power. Its hope is that its obvious strength will deter all opposition. This is the logic of President Bush's first inaugural address, in which he promised to "build our defenses beyond challenge, lest weakness invite challenge."<sup>22</sup>

Yet in the torture chamber, the state's power is simultaneously at opposite extremes. Though in terms of the *individual* victim the state's power is at its most acute, in terms of the overall *society* the resort to torture generally bespeaks a crisis of legitimacy.<sup>23</sup> It signals both that social habit toward obedience is failing and that the state does not feel itself capable of tolerating defiance.

The individual is tortured; the community is terrorized. But pain can only coerce, it cannot persuade. Terror may bring obedience, but not loyalty. Power, but not legitimacy.

Beyond all this, and most damning of all—torture may itself discredit the regime and inspire resistance.

Chris Mackey frowned upon the Abu Ghraib abuses in part for these kinds of pragmatic, political reasons:

The abuses at Abu Ghraib are unforgivable not just because they were cruel, but because they set us back. The more a prisoner hates America, the harder he will be to break. The more a population hates America, the less likely its citizens will be to lead us to a suspect.<sup>24</sup>

He adds later:

One of the most profound tragedies of Abu Ghraib is that the images of depravity will influence anti-American sentiment in the Muslim world for a generation, driving who knows how many would-be jihadists into the ranks of Al Qaeda or other terrorist organizations.<sup>25</sup>

With this in mind, the torture chamber becomes a microcosm of the empire. The reliance on fear and force, and the intolerance of all opposition, are the same. The limits of coercion, and its tendency to produce resistance—these are the same as well.

## AGAINST TORTURE, AGAINST THE STATE

This understanding has implications for those who would abolish torture. Laws, as we've seen, are not enough. And the evidence suggests that international agreements may primarily serve as cover

for abusive regimes. Based on a study of the empirical record, Oona Hathaway concludes that the Convention Against Torture does not, on its own, lead governments to halt abusive practices.<sup>26</sup> But, she notes, government behavior is effectively influenced by the *enforcement* of international agreements, the concern for the state's international reputation, and domestic pressure.<sup>27</sup> In other words, states avoid practices that result in real costs to them, whether in terms of resources, influence, or legitimacy. Strategies that elevate such costs can shape the behavior of governments and limit the worst abuses. But to eliminate torture altogether, more radical measures may be required. The entire configuration of political power, perhaps even the very concept of *power*, needs to be replaced.

To oppose torture is, both philosophically and strategically, to oppose state power.

In principle, this is true because any restriction on the state's access to violence ipso facto reduces its available power. Strategically, it is true because laws have never been enough to defend rights. To end torture, we must do more than forbid it. We must also endeavor to the hard work of dismantling the institutions that employ it, and the systems of power and privilege that legitimize it and profit from its use.

To succeed, we must work against each half of the state-torture nexus. We must attack torture; and in attacking torture, we indirectly attack the state itself.<sup>28</sup> But we must also attack the state directly, as a means of opposing torture. So, the fight against torture requires that we support and strengthen existing constraints on state action—that is, we should act to preserve the division of power, defend constitutional rights, and seek the enforcement of international law. The work of organizations like Amnesty International and Human Rights Watch is indispensable in this regard—but it is not enough. However assertive, human rights work is essentially defensive. To win, we also need an offensive program.

The state engages in torture, at root, because torture represents another source of coercion, and states are in the business of coercion. The cause and effect here are pretty straightforward. The Bush administration (for instance) sought to remove the constraints on its treatment of prisoners because it wanted torture to be more readily available; it wanted torture to be available in large part because it wanted to use it to fight wars, impede dissent, and govern the world.

If we want to wipe out torture, and not merely limit it or force it into invisibility, we must address its root causes. We must frustrate

the US government's global ambitions, pit ourselves against the interests it serves, and disassemble the institutions that implement its program. We must seek to radically reduce—ideally, to eliminate—the state's ability to launch aggressive wars, to spy on the populace, to incarcerate, to keep dossiers, to patrol. It is, in short, necessary that we radically transform the institutions of political power, that we smash the state and break down the mechanisms of coercion so that they operate at a scale directly controllable by local communities.

Torture is an instrument of concentrated power. In this book, I have focused on the concentrated power of the state and its allied agencies. Historically, torture has also been used by the Church and by slave masters; it continues to make appearances within the patriarchal family. Unless these institutions are robbed of their coercive force, torture will continue no matter how many UN resolutions say otherwise. Unless matched with the radical redistribution of power, rights are like checks written on an overdrawn account.

In a real sense, rights only exist if they can be defended. For rights to be universal, then, what is needed is not simply a redistribution of power as it is, but a radical reimagining of power as well—power as cooperation and capacity rather than force and dominance. We must build power rooted in solidarity and shared hope rather than solitary confinement and individual pain. We must, in short, enact a politics modeled on dialogue rather than on rape.

Always, strategic questions remain concerning the priority of ideological versus institutional changes—but wherever we start, it is clear that both types of change need to happen. The masculinist conception of power provides torture with its blueprint, composes its justifications, and shapes the psychological drives that make it tempting for individual practitioners.<sup>29</sup> At the same time, deep-rooted prejudices about political, cultural, and racial superiority seem almost axiomatic to the imperial project; without them the Bush administration's arrogance and the public's initial enthusiasm for war are impossible to understand. Likewise, many of our government's domestic practices—police profiling, routine brutality, mass incarceration, and the criminalization of "foreigners"—arise from these same racist premises. But racism, sexism, and nationalism would merely be very bad ideas were it not for the real inequality that pervades every area of social life, and if not for the institutions that enforce their claims. The culture wars are worth fighting, and the politics of daily life does matter—but they cannot substitute for prison abolition, or the demilitarization of our society, or the workers' control of the economy, or the full participation of women

in civic life. The ideology of power must, for sure, be discredited; but the institutions of power must also be demolished.

We who live in the United States, the country's citizens in particular, are strategically placed within a web of global power. Our position in the metropole offers us unique opportunities to confront this power, to discredit it, to disrupt its operations—and also presents us with special obligations to do so. To the degree that our society is a democracy, we are responsible for what its government does.<sup>30</sup> There is only one way to find the exact measure of this responsibility, and that is to attempt the necessary changes.

Our government's atrocities neither begin nor end at Abu Ghraib, or in the Colombian jungle, or in Gaza, or at Guantánamo Bay. They begin here, in corporate boardrooms and air-conditioned Pentagon offices—and in our history of conquest and slavery. They continue here, in the prisons and the police precincts. And they come back here in the form of shell-shocked vets, diminished rights, budget deficits, militarized police, and hijacked airliners.

## NOTES

<sup>1</sup> Quoted in Amnesty International, "United States of America: Human Dignity Denied; Torture and Accountability in the 'War on Terror'" (October 27, 2004).

<sup>2</sup> Reed Johnson, "The Art of Interrogation: Experts Say Subtle Psychological Ploys May Be Better Than Thumbscrews When It Comes to Getting Terror Suspects to Confess," *Los Angeles Times*, March 15, 2003.

<sup>3</sup> "A police [force] that focus[es] on torture reduces its skills in other kinds of information gathering." Darius Rejali, "Speaking Frankly About Torture" (lecture, Reed College, Portland, OR, November 13, 2004).

<sup>4</sup> Quoted in James Ross, "A History of Torture," in *Torture: Does It Make Us Safer? Is It Ever OK? A Human Rights Perspective*, eds. Kenneth Roth and Minky Worden (New York: New Press, 2005), 5.

<sup>5</sup> Chris Mackey and Greg Miller, *The Interrogators: Inside the Secret War Against Al-Qaeda* (New York: Little, Brown and Company, 2004), 477.

Senator John McCain, who was taken prisoner in Viet Nam, disagrees: "I was once physically coerced to provide my enemies with the names of the members of my flight squadron, information that had little if any value to my enemies as actionable intelligence. But I did not refuse, or repeat my insistence that I was required under the Geneva Conventions to provide my captors only with my name, rank, and serial number. Instead, I gave them the names of the Green Bay Packers' offensive line, knowing that providing them false information was sufficient to suspend the abuse." John McCain, "Torture's Terrible Toll," *Newsweek*, November 21, 2005.

<sup>6</sup> For more on this, see Henry Shue, "Torture," *Philosophy and Public Affairs* 7, no. 2 (1978): 135.

<sup>7</sup> *Ibid.*, 131–132.

<sup>8</sup> This understanding is highlighted by the testimony of Bernard Cawley, the former New York City police officer who became something of a star witness during the Mollen Commission's 1994 corruption hearings:

"Question: Did you beat people up who you arrested?

Answer: No. We'd just beat people in general. If they're on the street, hanging around drug locations. It was a show of force.

Question: Why were the beatings done?

Answer: To show who was in charge. We were in charge, the police."

City of New York, Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department [Mollen Commission], "Commission Report" (July 7, 1994), 48.

<sup>9</sup> Quoted in Edward Peters, *Torture* (New York: Basil Blackwell, 1986), 103.

<sup>10</sup> Mark S. Hamm, Therese Coupeze, Francis E. Hoze, and Corey Weinstein, "The Myth of Humane Imprisonment: A Critical Analysis of Severe Discipline in US Maximum Security Prisons, 1945–1990," in *Prison Violence in America*, 2<sup>nd</sup> ed., ed. Michael C. Braswell, Reid H. Montgomery, Lucien X. Lombardo (Cincinnati: Anderson, 1994), 188.

<sup>11</sup> See, for instance: Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1977), 48–50.

<sup>12</sup> Joseph Conrad, *Heart of Darkness: A Case Study in Contemporary Criticism*, ed. Ross C. Murfin (New York: St. Martin's Press, 1989), 92.

<sup>13</sup> [Central Intelligence Agency], *KUBARK Counterintelligence Interrogation* (July 1963), <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/index.htm#hre> (accessed March 14, 2005).

<sup>14</sup> Darius M. Rejali, *Torture and Modernity: Self, Society, and State in Modern Iran* (Boulder, CO: Westview Press, 1994), 73–75.

<sup>15</sup> In some cases, political prisoners have been induced to sign statements prepared for them by the authorities, often without being allowed to read them. Sometimes they were given blank pages to sign, with the "confessions" to be added later. Kate Millett, *The Politics of Cruelty: An Essay on the Literature of Political Imprisonment* (New York: W.W. Norton, 1994), 249.

Elaine Scarry quotes a South Vietnamese army officer: "If you are not Vietcong, we will beat you until you admit you are; and if you admit you are, we will beat you until you no longer dare to be one." In Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985), 41–42.

<sup>16</sup> Shue, "Torture," 135.

<sup>17</sup> *Ibid.*, 136, 140–141.



- <sup>18</sup> Jean-Paul Sartre, introduction to *The Question*, by Henri Alleg (New York: George Braziller, 1958), 30.
- <sup>19</sup> Again, the comparison with rape is apropos: "Rape is an act which belies respect, and it is often an act actually intended to communicate the fact of disrespect. Whether it is the rapist's intention or not, being raped conveys for the woman the message that she is a being without respect, that she is not a person. And it is in part because of this that the institution of rape can play the role it does in the structure of intersexual relations in general." Carolyn M. Shafer and Marilyn Frye, "Rape and Respect," in *Feminism and Philosophy*, ed., Mary Vetterling-Braggin, Frederick A. Elliston, and Jane English (Totowa, NJ: Rowman and Littlefield, 1981), 342.
- <sup>20</sup> "Given the unquestioned powers to incarcerate—which is everything, or nearly everything: sequestration and secrecy, physical restraint and the shaping of physical and psychic experience (expanded by detention, particularly if detention is clandestine)—given these powers, the exercise of torture is only a logical extension of power itself." Millett, *Politics of Cruelty*, 308.
- <sup>21</sup> George Orwell, 1984 (San Diego: Harcourt Brace Jovanovich, Publishers, 1982), 267.
- Elsewhere in 1984, Orwell offers us this scene: "The real power, the power we have to fight for night and day, is not power over things, but power over men.' [O'Brien] paused, and for a moment assumed again his air of a schoolmaster questioning a promising pupil: 'How does one man assert his power over another, Winston?' Winston thought. 'By making him suffer,' he said. 'Exactly. By making him suffer.'" Ibid., 269.
- <sup>22</sup> Quoted in Chalmers Johnson, *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic* (New York: Metropolitan Books, 2004) 63.
- <sup>23</sup> Elaine Scarry outlines the paradox: "The physical pain is so incontestably real that it seems to confer its quality of 'incontestable reality' on that power that has brought it into being. It is, of course, precisely because the reality of that power is so highly contestable, the regime so unstable, that torture is being used." Scarry, *The Body in Pain*, 27.
- <sup>24</sup> Mackey and Miller, *The Interrogators*, xxiii. Mackey relates an incident in which it was precisely the absence of ill-treatment that led a prisoner to cooperate. Mackey asked the interpreter if the prisoner said why he gave in. "Yes. ... He said once he realized this was the worst the Americans were going to do, he decided it was time to reconsider which side he was on." Ibid., 426.
- <sup>25</sup> Ibid., 472.
- <sup>26</sup> "To begin with, states that have better torture records (and better reputations) are *less*, not more, likely to join the Convention Against Torture than states that have worse torture records (and worse reputations). This is particularly true among dictatorships (who do not face the

countervailing pressure of self-enforcement. ... Dictatorships are not only more likely on the whole to join the Convention Against Torture if their practices are worse than if they are better but also their likelihood of joining the Convention against Torture grows with each successive increment of worsening torture ratings. Moreover, it appears that the calculated risk that states with poor torture records (and reputations) take in joining the Convention may in fact pay off. The empirical evidence suggests that, if anything, states that join the Convention have *worse* practices than they would be expected to have had they not joined the Convention. This puzzling result may arise because states that ratify receive a boost in their reputations and consequently feel less incentive to make real improvements in their actual torture practices (improvements that would undoubtedly be more difficult and more expensive to achieve than the highly visible but politically costless act of ratifying a treaty)." Oona A. Hathaway, "The Promise and Limits of the International Law of Torture," in *Torture: A Collection*, ed. Sanford Levinson (Oxford: Oxford University Press, 2004), 208–209. Emphasis in original.

<sup>27</sup> Hathaway, "The Promise and Limits," 209.

<sup>28</sup> "Torture cannot be prohibited without an attack upon state power, limiting it, pruning it back to democratic proportions, imposing strict limitations upon its increasing luxuriance." Millett, *Politics of Cruelty*, 308.

<sup>29</sup> Don Sabo, Terry Kupers, and Willie London suggest that "the will to hurt [is] both an expression of and [a] driving force within the construction of hegemonic masculinity." Don Sabo, Terry A. Kupers, and Willie London, "Gender and the Politics of Punishment," in *Prison Masculinities*, ed. Don Sabo, Terry A. Kupers, and Willie London (Philadelphia: Temple University Press, 2001), 13.

<sup>30</sup> J. Glenn Gray offers a slightly different formulation of this principle: "The greater the possibility of free action in the communal sphere, the greater the degree of guilt for evil deeds done in the name of everyone." Quoted in Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), 298.

## BIBLIOGRAPHIC ESSAY

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TWO MAJOR CHALLENGES CONFRONT researchers investigating human rights abuses—the frustrating lack of information, and the overwhelming surfeit of information. On the one hand, many important details are simply not known, sometimes because they are being kept secret, sometimes because no one has bothered to record them. On the other hand, there are unfortunately thousands of cases to choose among, so many ugly stories to tell. And the information that is publicly available generally exists in the form of heavily redacted government documents, fragmentary newspaper accounts, and legalistic human rights reports. Together, these represent tens of thousands of pages of documents and little in terms of guidance for finding your way through them or building a narrative to explain them. With the Bush administration leaking like a torn condom, it could easily be years before the full value of the available documents is appreciated.

A single researcher can quickly become lost among the reams of paper and the frequently shifting URLs. A concerned citizen, intending to examine the evidence for herself, can become exhausted trying to decipher the official jargon, or attempting to sort out how one declassified memo relates to another. In part as a result of this documentary mess, a great deal of the information that is known is never adequately reported. Verifiable facts, including those admitted to in the government's own reports, continue to be presented in the media as allegations or theories—if they appear there at all. The public, meanwhile, becomes confused, grows tired of the unending cycle of allegation and denial, and soon loses interest, convinced that we simply cannot know. The story is made to seem too complicated to grasp.

The torture photos from Abu Ghraib very briefly interrupted this pattern. After *60 Minutes II* ran the story, the images were everywhere. And they spoke with a clarity that was absent in the earlier reports of abuse. But the interpretation of the photos, the attempt to grasp their significance, foundered on exactly the same point. The reporting became sporadic, and shallow. The facts failed to surface

in the public discourse. And the media did little to challenge the distortions, the convenient omissions, and the outright lies, propagated by the government.

It was, in part, a frustration with the media that led me to write this book. When the awful pictures first appeared, my conscience was shocked, but my intellect was not the least bit surprised. I was among that minority of cynics who had simply assumed that such abuses were occurring. I wondered, in fact, at the bewilderment of my fellow citizens. What did they think it meant when Bush declared that the Geneva Conventions would not apply in Afghanistan? I was reminded, sadly, of the 1991 Rodney King video and the confused outrage it provoked. "Well, what did you think the cops do?" I asked. "Why do you think they carry those clubs?"

Yet as my research advanced, the sense of dissonance increased. The gap between what I knew to be true and what I heard on NPR grew intolerably wide. And still there was always the sense that I was only skimming along the surface, pointing out the obvious. Again, the problem was both too little information, and too much.

I knew that I could not, on my own, examine every relevant document, even for the period 2001–2005. I did make a point of reading for myself those that seemed most important. But to guide my search through the innumerable pages that were available, I was often at the mercy of secondary sources. Now, thankfully, the most important documents relating to Abu Ghraib have been collected in competing volumes. Among these, I chose to cite Mark Danner's *Torture and Truth*. It collects many of the famous photographs, the reports by the Red Cross, General Taguba, Generals Fay and Jones, and the Schlesinger Commission, as well as statements from the victims, assorted legal memoranda, and some of Danner's essays on the war (which are mostly worthwhile). The book is reasonably complete, but you can still carry it around without straining your back. I have also listed (in the suggested reading) the more exhaustive collection, *The Torture Papers*, and the more abbreviated *Abu Ghraib Investigations*. Additional reports are available at the Defense Department's website, [http://defenselink.mil/news/detainee\\_investigations.html](http://defenselink.mil/news/detainee_investigations.html).

The endnotes document the sources I used, and a close look at the citations may show something of my research strategy. For tracing out the overall course of events since 2001, I read the coverage of the *Washington Post* and the *Guardian*. (Strangely, the best coverage of the American military's treatment of Afghan prisoners at a naval base in Cuba was provided by a British newspaper.) These papers, along with the *New Yorker*, stood out among the English-language

press for the consistency of their coverage, the detail of their reporting, and their refusal to consign important facts to the memory hole. To a lesser degree, the *New York Times* also proved useful, especially concerning events in Afghanistan.

Much of the information first relayed in the *Guardian* later appeared in David Rose's book *Guantánamo*. Likewise, a great deal of the relevant *New Yorker* reporting was assembled in Seymour Hersh's *Chain of Command*. Where possible I cited these books rather than the numerous original articles, for the reader's convenience as well as my own.

For general information on the overall direction of US foreign policy, I largely relied on the usual critics from the left, in particular Noam Chomsky, William Blum, Chalmers Johnson, Ellen Meiksins Wood, and Ward Churchill.

On the domestic side, the sources were more scattered. Local newspapers provided much of the material, as did a few magazines. (Among these, Anne-Marie Cusac's work in the *Progressive* stood apart as an invaluable resource, covering a great range of information with admirable clarity.) Here I selected newspapers mostly because of their proximity to the events I was investigating. Those that appear most frequently are the *San Francisco Chronicle*, the *Chicago Tribune*, the *Los Angeles Times*, and (again) the *Washington Post*. In almost every case, I found the articles in the NewsBank database America's Newspapers and accessed them between June 2004 and January 2006. A few articles relating to immigrant detentions after September 11 were accessed in 2002. The major exceptions are the articles from the *Guardian* and the *Observer*, which I found conveniently archived on the *Guardian's* web page, <http://www.guardian.co.uk>, and those from the *New York Times*, which I found in ProQuest's *New York Times* database.

For the historical, legal, and theoretical discussions, I leaned heavily on the scholarly literature, and I shifted promiscuously between disciplines like sociology, history, political science, feminist studies, law, and ethics. I also sought to incorporate material from the professional military and law enforcement literature and the perspectives of those who worked as guards and interrogators. The most useful of these resources appear in the suggested reading list that follows. Of particular interest are *Newjack* and *The Interrogators*, thoughtful memoirs from a journalist-turned-prison guard and a US Military Intelligence interrogator, respectively.

In grappling with the knot of issues surrounding international law, wartime ethics, and the causes of atrocities, I was helped enormously by Mark Osiel's *Obeying Orders*, Michael Walzer's *Just and*



*Unjust Wars*, and many articles from *Philosophy and Public Affairs*, several of which are collected in *War and Moral Responsibility*. Where I cite treaties, conventions, or other instruments of international law, I usually found the material in one of the collections of primary sources listed below.

In writing about prison conditions in the United States, I was aided by several anthologies, most especially, Tara Herivel and Paul Wright's *Prison Nation*, which collects many excellent pieces from *Prison Legal News*, and the more scholarly collections *Building Violence* and *Prison Violence in America*. Michael Welch's essays in *Punishment in America* were also very helpful, though his work is definitely written for social scientists rather than for the public at large. In my view, the best and most readable study of the contemporary prison system is Christian Parenti's *Lockdown America*, a book that greatly influenced my analysis of the gender politics of prison.

The application of gender analysis to the U.S. prison system was further aided by the papers in the volumes *Prison Sex* and *Prison Masculinities*. Readers looking to understand the causes and prevalence of prison rape would do well to follow these books with Amnesty International's *Not Part of My Sentence*, which concentrates on the rape of women behind bars, and Human Rights Watch's *No Escape*, which addresses the rape of men. Though my thinking on gender has been shaped by many more sources than one could profitably cite, the feminist analysis employed here was most prominently shaped by Kate Millett and her work in the books *Sexual Politics* and *The Politics of Cruelty*, and by the work of Angela Davis.

While a certain portion of this book is intended as a corrective to Foucault's more glaring errors, his influence is nevertheless undeniable. *Discipline and Punish* has done much to expose the prison's role as a central institution of political authority. This analysis is neatly complemented by Erving Goffman's much more accessible examination of total institutions in *Asylums*. The two books should, I think, be read together.

I had a relatively easy time researching the police use of torture, as I had already written one book about the police, *Our Enemies in Blue*. The analysis here mostly develops along the same lines as in that volume, so I have not attempted to reference every publication that influenced my thinking on the subject. (Those who wish I had should refer to the extensive bibliography in *Enemies*.) I did, however, describe different cases in this work and supplemented my earlier research with additional sources. Mostly this material was drawn from newspaper articles and human rights reports, which I dutifully cited

in the notes. I also profited by reading Marilyn Johnson's history of the New York police, *Street Justice*, which was unfortunately not yet available when I was researching *Enemies*. Johnson's book, my book, and the most comprehensive of the human rights reports on police brutality are listed below.

Finally, I should stress that it simply would not have been possible to write this book were it not for the previous work of numerous human rights organizations operating around the world. Their reports, now commonly available on the internet, detail individual abuses, help provide a sense of the scale and scope at which they are occurring, put them in historical and political context, and relate them to human rights law and other international standards. Among the human rights organizations whose prior work helped form the foundation for my research are Human Rights Watch, Amnesty International, School of the Americas Watch, and the Center for Constitutional Rights. In almost every case, the reports I cite in the text appear on the relevant organization's website, which I list below. The ACLU's contribution to the field, while somewhat different in nature, is also remarkable; it has used the Freedom of Information Act to force the release of innumerable government documents. Thousands are posted on the organization's web page. Along with feeling overwhelmed, I am also very grateful.

#### **SUGGESTED READING**

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I have not attempted here to reproduce the work done in the notes. Instead, I have only listed those sources that I found most interesting and that I would recommend to a curious reader who wishes to learn more.

I have grouped the sources by topic, in the following not entirely arbitrary order:

TORTURE (GENERAL)

TORTURE (ETHICS AND PHENOMENOLOGY)

SOCIAL PSYCHOLOGY

INTERNATIONAL LAW (PRIMARY DOCUMENTS)

INTERNATIONAL LAW AND HUMAN RIGHTS (ANALYSIS)

US FOREIGN POLICY AND IMPERIALISM

ABU GHRAIB

GUANTÁNAMO BAY

AFGHANISTAN

POLICE

PRISONS

RAPE, GENDER, AND SEXUAL POLITICS

HUMAN RIGHTS AND CIVIL RIGHTS ORGANIZATIONS

**TORTURE (GENERAL)**

---

- Amnesty International. *Combating Torture: A Manual for Action*. London: Amnesty International, 2003.
- Darmer, Katherine B., Robert M. Baird, and Stuart E. Rosenbaum, eds. *Civil Liberties Vs. National Security in a Post-9/11 World*. Amherst, NY: Prometheus Books, 2004.
- Levinson, Sanford, ed. *Torture: A Collection*. Oxford: Oxford University Press, 2004.
- Peters, Edward. *Torture*. New York: Basil Blackwell, 1986.
- Roth, Kenneth, and Minky Worden, eds. *Torture: Does It Make Us Safer? Is It Ever OK? A Human Rights Perspective*. New York: New Press and Human Rights Watch, 2005.

**TORTURE (ETHICS AND PHENOMENOLOGY)**

---

- Dershowitz, Alan. *Why Terrorism Works: Understanding the Threat, Responding to the Challenge*. New Haven, CT: Yale University Press, 2002.
- Klockars, Carl B. "The Dirty Harry Problem." In *Thinking About Police: Contemporary Readings*, ed. Carl B. Klockars and Stephen D. Mastrofski. New York: McGraw-Hill, 1991.
- Millett, Kate. *The Politics of Cruelty: An Essay on the Literature of Political Imprisonment*. New York: W. W. Norton, 1994.
- Scarry, Elaine. *The Body in Pain: The Making and Unmaking of the World*. New York: Oxford University Press, 1985.
- Shue, Henry. "Torture." *Philosophy and Public Affairs* 7, no. 2 (1978).

**SOCIAL PSYCHOLOGY**

---

- Blass, Thomas, ed. *Obedience to Authority: Current Perspectives on the Milgram Paradigm*. Mahwah, NJ: Lawrence Erlbaum Associates, 2000.
- Milgram, Stanley. *Obedience to Authority: An Experimental View*. New York: Harper & Row, 1974.
- Musen, Ken, dir. *Quiet Rage: The Stanford Prison Experiment*. 1985.

**INTERNATIONAL LAW (PRIMARY DOCUMENTS)**

---

Office of the [UN] High Commissioner for Human Rights and International Training Centre of the ILO. *Basic Human Rights Instruments*. Geneva: United Nations Centre for Human Rights; Turin: International Centre of the ILO, October 1998. Also available at [www.hrw.org](http://www.hrw.org).

Reisman, W. Michael, and Chris T. Antoniou, eds. *The Laws of War: A Comprehensive Collection of Primary Documents on International Laws Governing Armed Conflict*. New York: Vintage Books, 1994.

US Department of State. "Initial Report of the United States of America to the UN Committee Against Torture" (October 15, 1999). Available at [http://www.state.gov/www/global/human\\_rights/torture\\_toc99.html](http://www.state.gov/www/global/human_rights/torture_toc99.html).

**INTERNATIONAL LAW AND HUMAN RIGHTS (ANALYSIS)**

---

Cohen, Marshall, Thomas Nagel, and Thomas Scanlon, eds. *War and Moral Responsibility*. Princeton, NJ: Princeton University Press, 1974.

Human Rights Watch. "The Legal Prohibition Against Torture." June 1, 2004. Available at <http://www.hrw.org>.

Osiel, Mark J. *Obedying Orders: Atrocity, Military Discipline, and the Law of War*. New Brunswick, NJ: Transaction Publishers, 2002.

Walzer, Michael. *Just and Unjust Wars: A Moral Argument With Historical Illustrations*. New York: Basic Books, 1977.

**US FOREIGN POLICY AND IMPERIALISM**

---

Bix, Herbert P. "Torture, Racism, and the Sovereign Presidency." *Z Magazine*, July/August 2005.

Blum, William. *Killing Hope: U.S. Military and CIA Interventions Since World War II*, updated ed. Monroe, ME: Common Courage Press, 2004.

———. *Rogue State: A Guide to the World's Only Superpower*. Monroe, ME: Common Courage Press, 2000.

Chomsky, Noam. *The Culture of Terrorism*. Boston: South End Press, 1988.

———. *Hegemony or Survival: America's Quest for Global Dominance*. New York: Metropolitan Books, 2003.

———. *Rogue States: The Rule of Force in World Affairs*. Cambridge, MA: South End Press, 2000.

Churchill, Ward. *On the Justice of Roosting Chickens*:

- Reflections on the Consequences of US Imperial Arrogance and Criminality*. Oakland, CA: AK Press, 2003.
- Johnson, Chalmers. *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic*. New York: Metropolitan Books, 2004.
- Khalidi, Rashid. *Resurrecting Empire: Western Footprints and America's Perilous Path in the Middle East*. Boston: Beacon Press, 2004.
- Wood, Ellen Meiksins. *Empire of Capital*. London: Verso, 2005.
- Zinn, Howard. *A People's History of the United States, 1492–Present*. New York: HarperPerennial, 1995.

#### ABU GHRAIB

---

- Danner, Mark, ed. *Torture and Truth: America, Abu Ghraib, and the War on Terror*. New York: New York Review Books, 2004.
- Greenberg, Karen J., and Joshua L. Dratel, eds. *The Torture Papers: The Road to Abu Ghraib*. New York: Cambridge University Press, 2005.
- Hersh, Seymour M. *Chain of Command: The Road From 9/11 to Abu Ghraib*. New York: HarperCollins, 2004.
- Strasser, Steven, ed. *The Abu Ghraib Investigations: The Official Reports of the Independent Panel and Pentagon on the Shocking Prisoner Abuse in Iraq*. New York: Public Affairs, 2004.

#### GUANTÁNAMO BAY

---

- Ratner, Michael, and Ellen Ray. *Guantánamo: What the World Should Know*. White River Junction, VT: Chelsea Green Publishing, 2004.
- Rose, David. *Guantánamo: The War on Human Rights*. New York: New Press, 2004.
- Saar, Erik, and Viveca Novak. *Inside the Wire: A Military Intelligence Soldier's Eyewitness Account of Life at Guantánamo*. New York: Penguin, 2005.

#### AFGHANISTAN

---

- Mackey, Chris, and Greg Miller. *The Interrogators: Inside the Secret War Against Al Qaeda*. New York: Little, Brown and Co., 2004.



**POLICE**

---

Human Rights Watch. *Shielded From Justice: Police Brutality and Accountability in the United States*. New York: Human Rights Watch, 1998.

Johnson, Marilyn. *Street Justice: A History of Police Violence in New York City*. Boston: Beacon Press, 2003.

Williams, Kristian. *Our Enemies in Blue: Police and Power in America*. Brooklyn, NY: Soft Skull Press, 2004.

**PRISONS**

---

*Sources on prison rape appear in the next section.*

Braswell, Michael C., Reid H. Montgomery, Jr., and Lucien X. Lombardo, eds. *Prison Violence in America*, 2<sup>nd</sup> ed. Cincinnati: Anderson, 1994.

Conover, Ted. *Newjack: Guarding Sing Sing*. New York: Random House, 2000.

Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. Trans. Alan Sheridan. New York: Vintage Books, 1977.

Goffman, Erving. *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*. Garden City, NY: Anchor Books, 1961. See esp. "On the Characteristics of Total Institutions."

Herivel, Tara, and Paul Wright, eds. *Prison Nation: The Warehousing of America's Poor*. New York: Routledge, 2003.

Parenti, Christian. *Lockdown America: Police and Prisons in the Age of Crisis*. London: Verso, 1999.

Welch, Michael. *Punishment in America: Social Control and the Ironies of Imprisonment*. Thousand Oaks, CA: Sage Publications, 1999.

**RAPE, GENDER, AND SEXUAL POLITICS**

---

Amnesty International. "United States of America, Rights for All: 'Not Part of My Sentence'; Violations of the Human Rights of Women in Custody" (March 1999). Available at <http://www.amnesty.org>.

Connell, R. W. *Gender and Power: Society, the Person, and Sexual Politics*. Stanford, CA: Stanford University Press, 1987.

———. *Masculinities*. Berkeley: University of California Press, 1995.

Hensley, Christopher, ed. *Prison Sex: Practice and Policy*. Boulder, CO: Lynne Rienner, 2002.

- Human Rights Watch. *No Escape: Male Rape in US Prisons*. New York: Human Rights Watch, 2001. Available at <http://www.hrw.org>.
- Millett, Kate. *Sexual Politics*. Garden City, NY: Doubleday, 1970.
- Sabo, Don, Terry A. Kupers, and Willie London, eds. *Prison Masculinities*. Philadelphia: Temple University Press, 2001.
- Shafer, Carolyn M., and Marilyn Frye. "Rape and Respect." In *Feminism and Philosophy*, ed. Mary Vetterling-Braggin, Frederick A. Elliston, and Jane English. Totowa, NJ: Rowman and Littlefield, 1981.

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#### **HUMAN RIGHTS AND CIVIL RIGHTS ORGANIZATIONS**

- American Civil Liberties Union: <http://www.aclu.org>
- American Friends Service Committee, New York Metropolitan Region, Prison Watch: <http://www.afsc.org/nymetro/criminalJustice/prisonwatch.htm#JUSTICE>
- Amnesty International: <http://www.amnesty.org> and <http://www.amnestyusa.org>
- Center for Constitutional Rights: <http://www.ccr-ny.org>
- Human Rights Watch: <http://www.hrw.org>
- Physicians for Human Rights: <http://www.phrusa.org>
- School of Americas Watch: <http://www.soaw.org/new/>

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Special thanks are owed to Rose City Copwatch for allowing me to access the internet from their office, and to the Western Prison Project, for making available to me many articles and reports that I otherwise may never have found. Also, thanks are due to my friends who read the manuscript and whose comments greatly improved both the argument of the book and the clarity of my writing. They are: Heather Ackles, Sven Bonnichsen, Daniel Buck, Barrett Chaix, Candace Larson, Geoff McNamara, Clair Maddox, Missy Rohs, Liz Samuels, Josef Schneider, and Clayton Szczech.

Most of all, thanks to Emily-Jane Dawson. Emily-Jane's comments on the manuscript proved invaluable, and her research advice was uniformly helpful. But above all, Emily-Jane's friendship and care made it possible for me to face what was, at times, a very depressing project. I cannot express my gratitude enough.

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